Supreme Court, U. S.
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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-696

THE EMPORIUM CAPWELL COMPANY,
Petitioner,

—v.—

WESTERN ADDITION COMMUNITY ORGANIZATION,
Respondent.

and

No. 73-830

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

WESTERN ADDITION COMMUNITY ORGANIZATION,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMPANY'S PETITION FOR CERTIORARI FILED OCTOBER 27, 1973
BOARD'S PETITION FOR CERTIORARI FILED NOVEMBER 26, 1973
CERTIORARI GRANTED FEBRUARY 19, 1974

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Case No.: 20-CA-5304

In the matter of:

WESTERN ADDITION COMMUNITY ORGANIZATION

11.19.68	Charge filed
3. 4.69	Complaint and Notice of Hearing, dated
3.11.69	Petitioner's Answer, dated
4. 8.69	Hearing opened
4. 8.69	Hearing closed
10.20.69	Trial Examiner's Decision issued
10.20.69	Trial Examiner's Order correcting transcript, dated
12. 3.69	General Counsel's Exceptions to portions of the Trial Examiner's Decision, received
12. 5.69	Charging Party's Exceptions to the Trial Examiner's Decision, received
12.29.69	Employer's Exceptions to portions of the Trial Examiner's Decision, received
12.14.70	Board's Notice of Hearing, dated
1.19.71	Interested Party U.S. Equal Employment Opportunity Commission's Motion for special leave to file brief amicus curiae, and for an extension of time in which to file brief, dated
1.21.71	Interested Party NAACP's Motion for leave to file brief amicus curiae, dated
1.22.71	Board's telegram granting leave to file amicus brief, dated
7.22.71	Board's Decision and Order, dated
6.29.73	Opinion of the Court of Appeals
2.19.74	Order of the Supreme Court granting petitions for certiorari

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTIETH REGION

Case No. 20-CA-5304

IN THE MATTER OF:

THE EMPORIUM

and

WESTERN ADDITION COMMUNITY ORGANIZATION

Room 13025
Federal Building
450 Golden Gate Avenue
San Francisco, California

Tuesday, April 8, 1969

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

WILLIAM E. SPENCER, Trial Examiner.

APPEARANCES:

GEORGE O. BAHRS, 351 California Street, San Francisco, California, appearing on behalf of the Respondent-Employer.

KENNETH HECHT, 1095 Market Street, #313, San Francisco, California, appearing on behalf of the Charging Party.

WALTER L. KINTZ and DOUGLAS H. BARTON, 450 Golden Gate Avenue, San Francisco, California, appearing on behalf of the General Counsel of the National Labor Relations Board.

[3] PROCEEDINGS

TRIAL EXAMINER SPENCER: On the record.

This is a hearing before the National Labor Relations Board in the matter of The Emporium and Western Addition Community Organization, case No. 20-CA-5304, the Trial Examiner appearing for the National Labor Relations Board being William E. Spencer.

Will you state your appearances in the following order for the General Counsel?

MR. BARTON: Douglas H. Barton, 450 Golden Gate Avenue, San Francisco, California.

TRIAL EXAMINER: Is that Barton?

MR. BARTON: Yes, B-a-r-t-o-n, right.

TRIAL EXAMINER: B-a-r-t-o-n?

MR. BARTON: Yes.

MR. KINTZ: Walter L. Kintz, same address for the General Counsel.

TRIAL EXAMINER: For the Emporium, the Respondent in the case?

MR. BAHRS: George O. Bahrs, 351 California Street, San Francisco, California.

TRIAL EXAMINER: For Western Addition Community Organization?

MR. HECHT: Kenneth Hecht, San Francisco Neighborhood Legal Assistance Foundation, 1095 Market St.

[4] TRIAL EXAMINER: Is that H-e-c-h-t?

MR. HECHT: Yes.

TRIAL EXAMINER: Thank you.

You have all been advised about the procedures by the document that is attached to the complaint, therefore, any preliminary remarks on my part are not necessary and we will proceed immediately to the introduction of the formal papers.

MR. BARTON: At this time, Your Honor, I would like to introduce the formal papers. They have been marked for identification as General Counsel's Exhibits 1(a) through 1(f), 1(f) being an index and description of all documents that have been shown to other parties.

(The documents above referred to were marked General Counsel's Exhibits 1(a) through 1(f) for idenfication.)

TRIAL EXAMINER: Any objection?
MR. BARTON: No objection.
MR. HECHT: No objection.
TRIAL EXAMINER: They are received.

(The documents above referred to, heretofore marked General Counsel's Exhibits 1(a) through 1(f), were received in evidence.)

TRIAL EXAMINER: Now I notice from the answer that all the commerce allegations are admitted. Therefore, there is no litigation needed there.

• • • •

[8] MR. KINTZ: We have a few documents, some of which have already been mentioned.
TRIAL EXAMINER: You want to offer them now?
MR. KINTZ: Yes.
MR. BARTON: First we will offer as a joint exhibit, which I have marked as Joint Exhibit 1(a) and 1(b) the EEO report filed by the Emporium and I believe the Respondent is going to stipulate to its authenticity.
TRIAL EXAMINER: What is the materiality of this?
MR. BARTON: Well, in the Tanner case there was reference to whether or not employees had a reasonable basis for the objective which they sought through their concerted activities, so we offer them for that purpose as an objection to their objective facts.
TRIAL EXAMINER: Any obligation?
MR. BAHRS: No objection.
TRIAL EXAMINER: They are received and so marked.

(The documents above referred to, were marked Joint Exhibits 1(a) and 1(b) for identification and received in evidence.)

MR. BAHRS: May I see them?
MR. BARTON: Yes.

We would like also to introduce as General Counsel's Exhibit 2 the collective bargaining agreement which exists between Respondent and Local 1100 of the Retail Clerks Union.
[9] TRIAL EXAMINER: Any objection?
MR. BAHRS: No objection.
TRIAL EXAMINER: Received.

(The document above referred to was marked General Counsel's Exhibit 2 for identification and received in evidence.)

MR. BARTON: Your Honor, at this point we would call Tom Hawkins as our first witness.
TRIAL EXAMINER: Come forward, Mr. Hawkins and raise your right hand.

Whereupon,

TOM HAWKINS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Barton) State your name please?
A Tom Hawkins.
Q Your address?
A 1132 Scott.
Q Have you ever worked for the Emporium?
A Yes, I have.
Q When did you begin?
A June 27, 1966.
Q Which store?
[10] A Emporium downtown, 934 or—excuse me 834 or 835 Market.
Q Did you ever work in any other location?
A No, I didn't.
Q What were your hours of work?
A I first started off at 7:45 to 4:45 and then I switched from 9:00 to 5:45.

Q When was this change made?
A About a year after I was working, I was sort of dissatisfied in a certain area.
TRIAL EXAMINER: Now if you will just confine yourself to answering the questions, we will save time. He asked you when was the change made?
THE WITNESS: About a year after I was working.
Q (By Mr. Barton) What position did you hold with The Emporium?
A Stock clerk.
Q What were your duties as stock clerk?
A It wasn't any main duties, but I had a certain department.
MR. BAHRS: I can't hear you.
THE WITNESS: I had a certain area that I was covering, I could be changed at any time.
Q (By Mr. Barton) Eventually what would you do from day to day, what kind of work?
A I was working in hosiery, in the hosiery department.
Q Doing what?
[11] A Stocking hosiery.
Q Be a little more descriptive as to how you would go about this process?
A You mean putting the boxes on the shelf, by sizes, you would call it I guess?
Q Well what kind of activities—it is not very enlightening to the Trial Examiner to say—
TRIAL EXAMINER: Just tell us what you did? Did you pick them up someplace and put them someplace?
THE WITNESS: They were in big boxes and I broke them down into different sizes off the trucks.
Q (By Mr. Barton) How were you paid?
A You mean every other week like this?
Q Well, at what—how was your wage computed?
TRIAL EXAMINER: By the hour?
THE WITNESS: Yes.
TRIAL EXAMINER: By the hour?
THE WITNESS: Yes.
Q (By Mr. Barton) What rate were you paid?
A $2.05 an hour to start.

Q Did you receive a raise subsequent to that?
A Yes, I did. It went up to $2.25 and a half.
Q Were you assigned to any specific area or department?
A Yes, I was in the hosiery department.
MR. BAHRS: I can't hear you, sir. You were in the hosiery
[12] THE WITNESS: Hosiery.
Q (By Mr. Barton) Did you from time to time move to a different department?
A Yes, at one time I was running the whole floor by myself.
Q And when you would make such a move who would tell you to go from one area to another?
A Mr. Elliott was one of our immediate supervisors. He would tell me to go to a different area or areas if it was necessary. You never had one certain area to cover at all times.
Q What was Mr. Elliott's position?
A He was the manager of the certain area he was like an assistant, just above the supervisors.
Q Who was your immediate supervisor on the job?
A At first it was Mr. Reese.
Q What was his title?
A He was supervisor.
Q Would Mr. Reese or other persons who held that position do the same kinds of daily activities which you would do?
A Yes, they would.
Q About what portion of their time would they spend doing this kind of activity?
A Eight hours a day and overtime if it was necessary.
Q What part of the time would they be telling you what to do?
A It would be just like—if they want you to make a switch you would go over there, something like that or he would show [13] me what to do and that is it.
Q Who would you contact if you wanted to take time off?
A The medical department.
Q Would you ever contact your immediate supervisor?
A No.

Q If you became sick on the job who would you see?
A We would have to go to our immediate supervisor and then you go to medical and then it is okayed from there if you are sick enough to go home.
MR. KINTZ: I didn't hear your last part of your last answer.
THE WITNESS: If you were sick enough to go home.
Q (By Mr. Barton) Did you ever receive ratings on the job as to the quality of your performance?
A Yes.
Q About how often?
A Every six months.
TRIAL EXAMINER: Had the efficiency or lack of it anything to do with the discharge for this purpose?
MR. BARTON: No.
MR. KINTZ: Not the purpose of this line of questioning.
Q (By Mr. Barton) Now, were these ratings in written form?
A Yes, they were.
Q Who gave them to you?
A The assistant to the top manager. They have so many levels [14] of management to go to. You have supervisors, and assistant managers, assistant to him, then you have a manager and then you have the superintendent.
Q In that hierarchy who would give you the written rating?
A The assistant manager.
Q Who signed them? Were they signed?
A Two or three people would sign them. It would go from him signing it to Mr. Graff signing it to Mr. Hoekenga to sign them. Miss Anibale would rate it.
Q You mentioned Mr. Graff. What was his position?
A He is the manager of the area.
Q Were you ever called in for personal conferences regarding the quality of your work?
A. Yes.
Q About how often did this occur?
A Two or three times.
Q Who would be present on these occasions?

A Well, I talked to different people, like I talked to Miss Anibale one time. She was telling me how my attitude was bad and they couldn't agree with it and it was just a whole bunch of talk.
Q Would you tell us on each of these occasions what individual would be present?
A It would be just the person that I would be talking to like my prior testimony I said Miss Anibale was there at the time I [15] talked to her.
Q Would the floor supervisor be present?
A No, it was always an individual thing.
Q Now, directing your attention to Tuesday, October 22, 1968, do you recall holding a press conference regarding the Emporium's racial policies?
A Yes, I do.
Q When was this, what time of day?
A 10:00 a.m. in the morning.
Q Was this during your regular working hours?
A Yes, it was.
Q Had you notified the Emporium that you were going to be absent?
A Yes, I did.
Q Who did you contact?
A The medical department.
Q What did you tell them?
A That I had to take care of some business and that I would be in that afternoon.
Q What did the person you were talking to say in response?
A They said it was okay.
Q Were did you hold this press conference?
A At the Sun-Reporter Building.
Q Who else was present on this occasion?
A Jim Hollins, Ron Epps, myself and Carlton Washington.
[16] MR. BAHRS: I can't hear the names over here.
TRIAL EXAMINER: Talk up loudly, please.
THE WITNESS: I will try to talk louder.
Q (By Mr. Barton) Who was present?
A Carlton Washington, Jim Hollins, Tom Hawkins, Ron Epps.

Q Were any of these employees of The Emporium?
A Yes, they were.
Q Which ones?
A All of them, all four of them.
Q All four of them?
A Yes.
Q Did they work with you?
A Yes.
Q What were their job positions?
A They were stock clerks. Jim Hollins was you call it a temporary supervisor with no title. He didn't have the badge and they just decided to pay him actually.

TRIAL EXAMINER: I didn't get that last, they, "Just decided to pay him"?

THE WITNESS: Yes. At first they didn't give him the rate of pay and then they decided that they would give him the rate of pay.

TRIAL EXAMINER: What rate of pay?

THE WITNESS: Supervisor's pay.

[17] TRIAL EXAMINER: Do you know when that decision was made?

THE WITNESS: After we had a union meeting and it came in the discussion and they decided that they should pay him after they had come into an argument with him about discrimination.

TRIAL EXAMINER: Do I understand you correctly to say that he was for a period there, he was a supervisor, but wasn't getting supervisory pay, is that what you said?

THE WITNESS: Yes, that's what I said. I did the same thing and I didn't get the title of it. This is how they worked.

Q (By Mr. Barton) And these other individuals did the same kind of work you did?
A Right.
Q Was a statement read at the press conference?
A Yes, it was.

TRIAL EXAMINER: A statement did you say?

MR. BARTON: Yes.

Q (By Mr. Barton) By whom?
A Jim Hollins.

Q Did you see the text of the statement?
A Yes, I did.
Q Can you recall pretty much what it said?
A It said that we were possibly going to hold a boycott of The Emporium.

MR. BAHRS: "We were what"?

[18] TRIAL EXAMINER: Possibly going to hold a boycott of The Emporium. Did you finish?

THE WITNESS: No. And it was stating that the Emporium had racist tactics and was treating black, brown, yellow and red people with discriminatory ways.

TRIAL EXAMINER: Would you read the last part of that answer?

(Record read)

TRIAL EXAMINER: Discriminatory what?

THE WITNESS: Ways.

Q (By Mr. Barton) What were you seeking?
A To try to talk to the top management to get better conditions for The Emporium.
Q How were you going to do this?
A Through group talk and through the president if we could talk to him.

TRIAL EXAMINER: I take it you are getting something that was said at a certain meeting?

MR. BARTON: That's right, at the press conference.

TRIAL EXAMINER: All right.

Q (By Mr. Barton) Were representatives of the press present?
A Yes.
Q Which ones?
A KTVU Channel 2, the Wall Street Journal and I think the Examiner.

[19] Q Was anything else said at the conference?
A No, we cut it short about ten minutes so we could answer questions and if the press asked us—
Q What?
A They just asked us questions that we answered that were strategic.
Q Did anyone criticize the company's merchandise?
A No.

Q Did anyone urge violence?
A No.
Q All right. Now, directing your attention to the Saturday, November 2nd, 1968, do you recall distributing leaflets near the Emporium?
A Yes, I do.
Q During what period of time?
A From the time it opened from 9:30 until 6:00 when it closed.
Q Were you supposed to be working at this time?
A No, I didn't.
Q What was the answer?
A No.
Q Why not?
A Because it was my day off.
Q Who was with you?
A Jim Hollins.
[20] Q Anyone else?
A Ron Epps, Carlton Washington.
Q Were they distributing leaflets too?
A Yes, they were.
TRIAL EXAMINER: There were four all together, is that right?
THE WITNESS: Yes.
Q (By Mr. Barton) Where were you located in relation to the entrance of the Emporium?
A On the side.
Q How wide is the sidewalk there, do you recall?
A Maybe about as wide as this room—I mean the sidewalk is—are you talking about the sidewalk?
Q Yes.
A The sidewalk is very narrow.
Q How wide is the entrance?
A About as wide as this room.
Q Did you notice anyone having any difficulty getting by you going in and out?
A I wasn't standing in the entrance way where they couldn't get by me.
MR. BARTON: Your Honor, I am marking for identification as General Counsel's Exhibit No. 3 what purports to be a leaflet entitled, "Beware Emporium Shoppers, Boycott is on."

(The document above referred to [21] was marked General Counsel's Exhibit 3 for identification.)

Q (By Mr. Barton) Mr. Hawkins, I will show you General Counsel's Exhibit 3 for identification and ask you if you can identify it?
A Yes.
Q What is it?
A This is the first leaflet we passed out on the first Saturday, on November 2.
MR. BARTON: I would offer this into evidence at this time.
MR. BAHRS: No objection.
TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 3 was received in evidence.)

Q (By Mr. Barton) Now, in distributing these leaflets on November 2, Mr. Hawkins, did you ever have occasion to raise your voice?
A Yes, I did.
Q When did this happen?
A When I had to—it was one of my policies of letting the people know and there was a crowd of people and there was always a lot of noise and so I couldn't talk softly and I wanted the people to be aware of what we were doing.
Q During the course of that day did you ever strike anyone?
[22] A No, I didn't.
Q Did you ever see any of your colleagues strike anyone?
A No.
Q Throw anything?
A No.
Q Did you urge anyone else to throw anything?
A No.
Q Did you curse or swear at anyone?
A On occasions.
Q When was this?

A This was when people couldn't respond respectfully to me and I couldn't basically destroy my respect and not say anything back to them.

Q What would they say to you?

A They would call me fictitious names.

Q What did they say?

A One lady called me a "nigger".

Q What did you say back?

A I said I was a "good nigger".

Q What else was said to you?

A I was called a, "Communist", and a lot of curse words.

Q And these were the remarks which you replied with curse words?

A Sometimes, yes, when I thought it was necessary.

Q Now, subsequent to your efforts on November 2, did anyone [23] from The Emporium ever speak to you about what you had been doing?

A Yes, they did.

Q Who was that?

A Mr. Ehrenfried.

Q Is that the person?

A Yes.

Q When did this occur?

A The dates are sort of weak in my mind.

Q How much after the leaflet—

A During the next week.

Q During the next week?

A Yes.

Q Who else was present at the time?

A If I recall it was Mr. Henderson, I am not for sure though.

Q Where were you located?

A In Mr. Ehrenfried's office.

Q What did he say?

A He told us about that we had a written warning about when we were distributing these leaflets and that we could be fired for it.

TRIAL EXAMINER: Read that back to me, Mr. Reporter.

(Record read)

Q (By Mr. Barton) Did he give you any document?

A Yes, he did.

[24] MR. BARTON: Your Honor, at this time I am going to mark as General Counsel's Exhibit 4 what purports to be a warning issued to Tom Hawkins.

(The document above referred to was marked General Counsel's Exhibit 4 for identification.)

Q (By Mr. Barton) I will show you, Mr. Hawkins, General Counsel's Exhibit 4 and ask you to identify it.

A Yes.

Q What is that?

A This is what Mr. Ehrenfried gave me when I went to his office and Mr. Ehrenfried is the one who was witnessing—

TRIAL EXAMINER: May I see a copy?

MR. BARTON: Yes, I am going to offer it at this time.

MR. BAHRS: No objection.

TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 4, was received in evidence.)

Q (By Mr. Barton) Now, subsequent to receiving warning, did you distribute any more leaflets?

A Yes, I did.

Q When did this happen?

A Saturday, November 9th.

Q The following Saturday?

A Yes.

Q During what period of time on this occasion?

[25] A From 9:30 until 6:00.

Q Was this during your regular working hours?

A No, it wasn't.

Q Why not?

A It was my off day.

Q Who else participated at this time?

A Jim Hollins and Ron Epps.

Q Where were you located?

A The front and back this time.

Q Incidentally, did Mr. Epps stay for the duration of the day, sir?
A No, he didn't, he left at about 3:00 o'clock.
Q Did Mr. Hollins stay?
A Yes.
TRIAL EXAMINER: Did the same leaflet that you had previously passed out?
THE WITNESS: There were some changes.
Q (By Mr. Barton) On this occasion where were you located in relation to the doorway?
A I was off on the side.
Q Did you notice anyone having any trouble getting by you in going in and out of the store?
A No.
MR. BARTON: Your Honor, at this time I am marking for identification as General Counsel's Exhibit No. 5 what purports [26] to be a leaflet entitled, "Emporium Shoppers".

(The document above referred to was marked General Counsel's Exhibit 5 for identification.)

Q (By Mr. Barton) Mr. Hawkins, I will show you General Counsel's Exhibit No. 5 for identification and ask you if you can identify that?
A Yes, I can.
Q What is that?
A The second leaflet that we had made up the following week.
Q Did you distribute that on that following day?
A Yes, we did.
MR. BARTON: I will offer that at this time.
TRIAL EXAMINER: Any objection?
MR. BAHRS: No objection.
TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 5, was received in evidence.)

Q (By Mr. Barton) Now, on this date did you raise your voice during that period?
A Yes, I did.

Q When did you raise your voice on these occasions?
A It comes in intervals like when I felt it was necessary to raise my voice so people could hear me when I would speak.
Q Did you ever strike anyone on November 9th?
A No, I didn't.
[27] Q Throw anything?
A No.
Q Urge anyone else to throw anything? Urge anyone else to do either?
A Beg your pardon?
Q Urge anyone else to do either? That is to strike anyone or throw anything?
A No.
Q Did you curse or swear at anyone on this particular day?
A Quite possibly I did, I can't remember.
Q On what occasions?
A When it was necessary.
Q For what purpose?
A To not lose my basic respect again so somebody else could respect me.
Q Subsequently to distributing leaflets the second time were you discharged by The Emporium?
A Yes, I was.
Q When did this happen?
A November 11th.
Q By whom?
A When I went to work I had a note that Mr. Ehrenfried wanted to see me. I went to his office.
Q When you went to the office what did Mr. Ehrenfried say?
A He had a paper, a discharge paper for me he wanted me to [28] sign.
MR. KINTZ: We had a little difficulty with the legibility with this exhibit.
MR. BARTON: I am marking for identification as General Counsel's Exhibit 6 what purports to be a discharge slip made out to Tom Hawkins.

(The document above referred to was marked General Counsel's Exhibit 6 for identification.)

Q (By Mr. Barton) I show you General Counsel's Exhibit 6 for identification and ask you if you can identify that?

A Yes, I can.

Q What is that?

A This is my discharge slip that they gave me when I was leaving the Emporium.

Q On that day?

A Yes.

MR. BARTON: I offer that at this time.

MR. BAHRS: No objection.

TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 6, was received in evidence.)

Q (By Mr. Barton) Well—

TRIAL EXAMINER: Is this the best that you can do on this exhibit?

MR. KINTZ: Yes. May I suggest that we read into the [29] record a stipulated statement of what it says?

TRIAL EXAMINER: I can read the first sentence very well, "You are being discharged today." Then it begins to get a little dim after that. If you can stipulate I think it might be helpful.

MR. KINTZ: May I suggest that I read what I believe it to say into the record and if Mr. Bahrs agrees or disagrees with me he can so express it?

TRIAL EXAMINER: All right.

MR. KINTZ: Well, we have reference to the legibility of the portion of the document marked, "Remarks". My reading is as follows: "You are being discharged today." "Distribution of 'Boycott Emporium' literature on Saturday, November 9th, 1968 in front of The Emporium, 835 Market Street, S.F. pursuant to written warning dated 11/7/68 for similar action on 11/2/68."

Is that correct, Mr. Bahrs?

MR. BAHRS: Yes.

TRIAL EXAMINER: Thank you.

MR. KINTZ: I propose a stipulation, Your Honor, that in case of any dispute of the remarks portion of

General Counsel's Exhibit 6 that the statement which I read into the record be designated as the contents thereof.

TRIAL EXAMINER: Is that satisfactory, Mr. Bahrs?

MR. BAHRS: That's satisfactory.

TRIAL EXAMINER: Mr. Hecht, you have nothing to say do you? [30] If you don't say something I assume that you so agree?

MR. HECHT: I will argue like the dickens if I don't.

I wonder if we could ask the Reporter to read back what was the portion stated in General Counsel's Exhibit 6 by the General Counsel?

TRIAL EXAMINER: Mr. Reporter, would you read it back please?

THE REPORTER: Yes, sir.

MR. BAHRS: First may we go off the record a moment?

TRIAL EXAMINER: Yes, off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

MR. HECHT: Could you read it back, Mr. Reporter?

THE REPORTER: Yes, sir.

(Record read)

MR. HECHT: Perfect.

TRIAL EXAMINER: You join in the stipulation, Mr. Hecht?

MR. HECHT: I surely do.

TRIAL EXAMINER: Very well.

Q (By Mr. Barton) All right, Mr. Hawkins, now on both occasions when you were distributing this, did you say anything regarding the quality of The Emporiums merchandise?

A No, I didn't.

Q About the quality of the service?

A No, I didn't.

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[32] Q (By Mr. Barton) Who made the decision to take this action against The Emporium?

A Ron Epps, Tom Hawkins, Jim Hollins and Carlton Washington, we all decided this would be the right procedure.

Q When did you make the decision?

A It was in a matter of weeks that we went through this [33] procedure of getting together that we would do this.

* * * *

[34] Q (By Mr. Barton) All right, Mr. Hawkins, in making your decision did you seek the opinion of the other minority employees at the Emporium?

A Yes, I did.

Q How did you go about this?

A We took a thorough investigation of non selling and selling areas of The Emporium, asking black, brown, yellow and red [35] people how they felt and what were the conditions and how we could have better conditions and not have lay offs in the middle part of the year when they called it a lower part of the year—

Q One moment. When did you go around asking people? When did this occur?

A During my break and lunch period.

TRIAL EXAMINER: That is before you distributed these pamphlets?

THE WITNESS: This was during the week when I was working at the Emporium.

Q (By Mr. Barton) Was it before the press conference?

A No, it was after the first press conference that we had, Mr. Barton.

Q How did you solicit the opinion of these other employees, what procedure did you employ?

A We had seven questions that we wrote down and we felt like we could answer them all to the people and asked the people how they felt and what would be their opinion about it and they would give us an answer and we would write it down.

TRIAL EXAMINER: Do you have the seven questions?

THE WITNESS: Mr. Hollins has.

MR. BARTON: My missing witness has.

TRIAL EXAMINER: Were they in writing?

THE WITNESS: Yes.

[36] TRIAL EXAMINER: With the answers in writing were they?

THE WITNESS: Yes, they were.

TRIAL EXAMINER: Now, you are getting towards something tangible that I think might be admissible if you have it.

MR. BARTON: When Mr. Hollins comes, as I say we hope to submit that, Your Honor.

TRIAL EXAMINER: By the way when you bring in the Tanner case—I have read it of course but not with any specific recollection as to the details. I want the Court's opinion as well and the remand. Will you bring it all in, that is if you want to put in this type of evidence?

MR. KINTZ: Yes, Your Honor.

TRIAL EXAMINER: All right.

Q (By Mr. Barton) When asking these questions of these employees, Mr. Hawkins, what was the response?

A It was all response that everybody had a basic grievance or basic complaint about how The Emporium was treating black, brown and yellow people and we wanted to get to the core of them and the purpose of the meeting, of talking to the President, was to try to get better conditions and this was the main purpose of it.

Q Just a minute.

A Let's take the questions one at a time.

TRIAL EXAMINER: Do we have any evidence about a talk with the President yet?

[37] MR. BARTON: Pardon?

TRIAL EXAMINER: Do we have any evidence yet with respect to any talk with the President?

MR. BARTON: No.

THE WITNESS: He refused to.

Q (By Mr. Barton) All right. Now, the employees with whom you spoke to in making your survey did you confine yourself to any department or—

A No, it was non selling and selling, we went all over.

TRIAL EXAMINER: In making this survey did you seek out any particular employees for any particular reason or was it just any employee?

THE WITNESS: We were seeking black, brown, yellow and red people because they were working at the lowest jobs and the lowest levels and this is what we had in the leaflet that we didn't put in the leaflet that they weren't in furniture, washing machines, TV and radio. We took the investigation to exploit black, brown, red and yellow people into these areas.

Q (By Mr. Barton) Now, had you taken this matter up with the union at any time?

A Yes, we had.

Q When did you do this?

A Early in April we made a grievance.

Q What year was that?

A That was in 1966 in April sometime.

[38] Q Who did you see—

TRIAL EXAMINER: I want that whole answer read back. I didn't get the way he uses the word grievance. Will you give me that answer back, Mr. Reporter?

THE REPORTER: Yes, sir.

(Record read)

TRIAL EXAMINER: You took up a grievance with the union, is that right?

THE WITNESS: Yes, this is what they call it as a formality.

TRIAL EXAMINER: All right.

Q (By Mr. Barton) You went to see who?

A The union representative, the Business Manager and Mr. Williams and Mr. Griffin, Johnson and Williams.

Q What happened on this occasion?

A As far as I'm concerned nothing, but as far as trying to get little changes, some changes came about, but as far as discrimination my part and my interest in it didn't come about.

Q Did the union hold a meeting?

A Yes, they did.

Q When was this?

A This was April the 4th if I remember.

Q What happened at that meeting?

A This was when they were discussing everything and they made a report on this that we had legitimate grievances on [39] discrimination and they were seeking to better the conditions.

TRIAL EXAMINER: The union made such a report?

THE WITNESS: Yes.

TRIAL EXAMINER: Do you have that report?

MR. BARTON: Yes, I am going to offer it. I have lost track of our exhibit numbers.

MR. KINTZ: Seven.

MR. BARTON: Seven?

MR. KINTZ: Yes.

MR. BARTON: At this time I am marking for identification General Counsel's Exhibit 7 which purports to be a copy of the report made by the union regarding the stock and marking areas at the Emporium.

(The document above referred to was marked General Counsel's Exhibit 7 for identification.)

Q (By Mr. Barton) I will show you General Counsel's Exhibit 7 and ask you if you can identify that?

A Yes, this is the report.

Q When did you see that report first?

A I can't remember the date that I have seen it, but Mr. Young showed it to me I think and then we went down and got a copy after months and months later.

Q You got a copy prior to the press conference?

A Yes—no, just before that's right it was before. We were preparing for it.

[40] MR. BARTON: I offer this into evidence at this time.

MR. BAHRS: Excuse me may I have the last question and answer read back please?

TRIAL EXAMINER: Yes, read it back, Mr. Reporter.

(Record read)

MR. BAHRS: Thank you.

TRIAL EXAMINER: You have an objection to the receipt of this?

MR. BAHRS: No objection.
TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 7 was received in evidence.)

Q (By Mr. Barton) When you went down to pick this up, who was with you, Mr. Hawkins?
A Carlton Washington.
Q Anyone else?
A No.
Q Were you ever present when either Mr. Hollins or Mr. Epps saw this document?
A We all saw it.
Q Do you know if the union filed a grievance regarding racial discrimination at The Emporium?
A I wouldn't swear to it.
TRIAL EXAMINER: In other words, you don't know if that was the fact?
[41] THE WITNESS: No, that was between them, I could not say.
TRIAL EXAMINER: He couldn't swear to it.
MR. BAHRS: I see.
TRIAL EXAMINER: Would you develop what this report says or what was done with it? I don't know what significance the report is unless it was shown to somebody.
MR. BARTON: I believe it is in the record that they did receive it and went down and picked up a copy and read it, the individual.
TRIAL EXAMINER: I see. Was it served on the company?
THE WITNESS: It was supposed to have been by the union. This is their report so evidently they supposedly turned it into the Emporium and as a result we didn't get any action from it until August.
TRIAL EXAMINER: My question was did the company ever see the report, do you know?
THE WITNESS: I have no knowledge.
TRIAL EXAMINER: All right.

MR. BARTON: The purpose again is to establish a reasonable basis.
TRIAL EXAMINER: I understand it, yes.
Q (By Mr. Barton) Was there a meeting of the adjustment board regarding a grievance filed by the union?
A Yes, there was.
Q Did you attend?
A Yes, I did.
[42] Q Did any of your—Mr. Hollins, Mr. Epps and Mr. Washington, were they with you?
A Yes, they were.
Q Did you present your case at that time?
A No, the union was supposed to represent us, we had prepared a statement to make that we weren't going to speak as individuals, we were speaking as a group and Mr. Hollins made this statement and after this statement the council was sort of shocked and surprised that we had made such a statement and that we just, after they had made their statement, we walked out.
TRIAL EXAMINER: Who was council?
THE WITNESS: Mr. Brown, Mr. Garrett and somebody else was there, the three man panel that you talk to to try to settle this thing, the matter of discrimination.
Q (By Mr. Barton) When was this made?
A I think it was in October.
TRIAL EXAMINER: Would you develop whether this was a management panel or was it the—what was the identity of the panel?
MR. BARTON: In the collective bargaining agreement it was an adjustment—
MR. BAHRS: It was an adjustment board constituted under Joint Exhibit No. 2 and there were three representatives and three representatives of the San Francisco Retailers Council [43] which is the collective bargaining representatives for the multi employer group including The Emporium and we will stipulate to that.
TRIAL EXAMINER: Do you accept the stipulation?
MR. BARTON: Yes.
TRIAL EXAMINER: Mr. Hecht?

MR. HECHT: I have no knowledge. I don't oppose the stipulation.

TRIAL EXAMINER: Did you get a date on when this grievance was presented?

MR. BARTON: He said something in October.

MR. BAHRS: We will offer a stipulation as to October 18.

MR. HECHT: So stipulated.

MR. BAHRS: Do you so stipulate?

MR. BARTON: So stipulated. We have no further questions.

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[45] CROSS-EXAMINATION

Q (By Mr. Hecht) Mr. Hawkins, before you started leafleting and before you held the press conference, did you attempt to adjust what you saw as a grievance through your union?

A Yes, we did.

Q Why did you not continue through the union?

A Because the union was sort of putting us off and on and was going into a lot of delay that we felt was unnecessary.

Q What sort of delays?

A Well, saying that there would be changes and when we finally met for this change we were going through a process where we had our own representation coming at this meeting [46] that they gave in late August that they got sort of upset about it because we were bringing something else in.

Q Who were you bringing in?

A Tomatu Scott.

Q From the Economic Opportunity Council in San Francisco?

A Yes.

Q Why did you bring him in?

A Because I felt like as being a black man he would know the problem of when you say discrimination because he had dealt with it before.

Q Was he to represent you, Mr. Hawkins? Or to represent all black people?

A Brown and yellow and red people.

Q Black, yellow, brown and red?

A Yes.

Q Was the union agreeable to having the grievance presented by all black, yellow, brown, red people together?

A Yes, they were. The sense was that they wanted to do something, but they wanted to go through the procedure of this retailers counciling and it was going to be individually when it came about when we were still talking group matters.

Q It was still going to be handled individually?

A Right, it was individual persons that would say something and on their behalf they would take it into consideration instead of a group matter that we were talking about.

[47] Q Was this way of proceeding that the union seemed to want to follow acceptable to you?

A No, it wasn't.

Q Why not?

A Because we felt that like if we talked as individuals well, they could only have a few cases, they would satisfy a few. Like Mr. Young, he was the only one that really got something out of the deal, he got a promotion.

Q Were there more than just a few people who had a grievance?

A There was a lot of brown, yellow and black people and red people that had a lot of grievances on conditions.

Q Is it a fair statement of what you are saying that it was your feeling that if the union handled the matter the way the union seemed to be handling the agreements would not be satisfactorily taken care of?

A No.

MR. HECHT: I think that is all I have.

TRIAL EXAMINER: I am sure the answer no is not what you expected, Mr. Hecht.

MR. HECHT: What came after that word explains it.

TRIAL EXAMINER: If you are satisfied why—are you finished?

MR. HECHT: I am unless if you think there is some confusion on that answer.

TRIAL EXAMINER: I think the answer was contrary to what [48] the witness intended to say, he said, "No".

MR. HECHT: Will you read the question and answer back, Mr. Reporter?

(Record read)

TRIAL EXAMINER: Did you intend to give that answer?

THE WITNESS: Let me think about the question myself.

MR. HECHT: I want to know if I could restate the question?

TRIAL EXAMINER: Surely.

Q (By Mr. Hecht) Let's try it this way. Was your understanding that the union was going to resolve this grievance as a group matter for all black, brown, yellow, red people or not?

A No, they weren't going to do this, it was an individual thing that they were trying.

MR. HECHT: Thank you, that's all.

TRIAL EXAMINER: Cross-examination, Mr. Bahrs?

MR. BAHRS: Yes.

Q (By Mr. Bahrs) Mr. Hawkins, did you ever present a grievance to The Emporium?

A Well, we tried to do it to the President. Mr. Hollins was going up to do it and the President got furious and wouldn't talk to us.

Q Did you ever try to present it?

A No.

Q You did not, right?

[49] A No.

Q You did however present a grievance to the union, is that right?

A Yes, we did.

Q This was in May was it or April?

A This was in April, yes.

Q Now, do you know whether following that meeting in April the union submitted a document to The Emporium that has been received in evidence as General Counsel's Exhibit No. 7? Do you know whether The Emporium ever got a copy of that document?

A Like I said I didn't have any knowledge of it.

Q You did say that there were some adjustments made, isn't that right, following this meeting in April?

A Yes, there was.

Q That the union had succeeded in having The Emporium make some adjustments on behalf of some minority employees?

A I would say minority employees exploited it out.

Q What was the answer?

A It could have been exploited out where you could have an Italian person but we wanted to have people like black people—

MR. BAHRS: I want the answer to be stricken as not responsive.

THE WITNESS: Well, I am trying.

Q (By Mr. Bahrs) Listen, sir, would you please listen to [50] the question?

A Yes.

TRIAL EXAMINER: Do you want it repeated?

MR. BAHRS: I will repeat it.

Q (By Mr. Bahrs) Do you know whether The Emporium made any adjustments for employees belonging to minority groups following this document at this meeting where General Counsel 7 was presented to employees?

MR. HECHT: I will object to the question.

TRIAL EXAMINER: This document has been put into evidence on direct examination and it is relevant. The question is relevant in the first place and he may answer.

THE WITNESS: I would like to point out something that is in the report.

MR. BAHRS: If Your Honor please I am going to object—

TRIAL EXAMINER: He asked you if any adjustments were made by the company with respect to mi-

nority groups after this particular document was published. Do you know if you know or don't you know?

THE WITNESS: No, I don't.

Q (By Mr. Bahrs) You testified on direct examination, didn't you that some people got raises?

A Raises?

Q You know what a raise is don't you?

A I know what a raise is but I am talking about who you are [51] talking about got a raise.

Q I am asking you who you are talking about. Didn't you testify that some people got improvements following the meeting?

A I was talking about like women got to wear slacks to work for instance. As far as black, brown, yellow, red people, they didn't get any—

Q How about a person getting promotion to a supervisor, didn't you testify to that in your direct examination?

A I said we were talking about promotion, like Russell Young, this was our main thing. As far as black people were going in, this is our first thing. This was a point that everybody was bringing up. It was whites, yellows, reds, everybody was bringing it up.

MR. BAHRS: I am going to ask that the answer be stricken.

THE WITNESS: This is the way I am explaining it to you and if you don't understand, this is the first report we gave out.

Q (By Mr. Bahrs) Which is the first report that you gave out?

A This was the first report.

Q When you are referring to this report will you please tell us what document you are referring to?

A This is the first one.

MR. KINTZ: General Counsel's Exhibit No. 7 that you have [52] reference to, is that it?

THE WITNESS: That is what I am talking about. That is the one we were just talking about Negroes, we weren't talking about brown, yellow, or red people, just Negroes.

Q (By Mr. Bahrs) I am asking you after that document was presented to The Emporium by the union, did The Emporium make any promotions of Negroes?

A Not to my knowledge.

TRIAL EXAMINER: If you know.

THE WITNESS: Not to my knowledge.

Q (By Mr. Bahrs) You do not know, right?

A I can not remember.

Q Did you testify on your direct examination about somebody being a supervisor?

A Mr. Reese, I believe I said.

TRIAL EXAMINER: I think he probably had reference to your testimony in respect of somebody who wasn't getting supervisory pay.

THE WITNESS: Mr. Hollins didn't have the badge nor was he getting until they had made—and this was late in the year, around Christmas and the other supervisor got sick.

TRIAL EXAMINER: You mean he got the raise in pay late in the year?

THE WITNESS: Right. They decided—Mr. Young was the assistant manager. They had talked it over with the personnel [53] and I guess they said that he should get the money, but he did not get the badge, he was just taking the supervisors place because he knew the area but as far as the title, this has never been really what negroes really had except very few and it was just pressure put upon him, not enlightened to him.

MR. KINTZ: I believe the record would be clarified if I can be allowed to observe that the witness on direct examination said on several occasions he didn't know when the union served General Counsel's Exhibit 7 on The Emporium or if they served it upon them which is one of the problems which introduces complication and why I objected to the original question about what happened after it because he doesn't know when.

TRIAL EXAMINER: The witness testified that he didn't even know it was served on the Respondent. I don't know why that really rules out the line of examination, however.

Q (By Mr. Bahrs) Do you know an employee by the name of Young?

A Yes.

Q Do you know whether or not he was promoted to a supervisor?

A Yes, he was.

Q Do you know when that took place?

A Not the specific date.

Q I beg your pardon?

A I don't know the specific date.

[54] Q Was it before or after you had the meeting with the union at which you stated your grievances?

A I think it was after.

Q Do you know a man by the name of Fata, F-a-t-a?

A Yes.

Q Was he promoted to a supervisor?

A Yes, he was.

Q Was this after you had your meeting at which—

A Yes, it was.

Q And were Young and Fata a part of the complainants that appeared before the union and asked—

A That's right.

Q Is that right?

A Right.

Q Okay. Now, you testified that you conducted—excuse me I will withdraw that.

Did the union also inform you that they were going to appear on your behalf with the Emporium and seek to improve your conditions of employment?

A You mean individually?

Q Yes.

A I never talked on an individual basis. I told them that—

TRIAL EXAMINER: I take it your answer is no that they never did?

THE WITNESS: No, right.

[55] Q (By Mr. Bahrs) You appeared before the union and asked the union to do what, sir?

A We were talking about brown, yellow and red people, black too.

Q Were you asking the union to appear before the San Francisco Retailers Council on behalf of all brown, red, yellow people?

A We were trying to represent them.

Q You were trying to represent them?

A All of us as a group, yes. We even asked Filipinos, anybody that wanted to come to the meeting we wanted to have come. They wanted us to individually go and bring them. We did not speak individually, we spoke as a group.

TRIAL EXAMINER: You spoke to the union as a group?

THE WITNESS: Right, we spoke to the union as a group.

Q (By Mr. Bahrs) Is this correct that the union offered to represent each one of the brown, red, yellow and black employees of The Emporium individually?

A This is what they wanted.

Q But that you refused to accept the union's representation on that basis, is that correct?

A On an individual basis, that's correct.

Q Now, do you know whether or not an adjustment board meeting was held on October 16, 1968?

A Yes, it was.

Q Do you know who appeared there with grievances?

[56] A No, because I didn't go.

Q You did not go?

A No.

Q You don't know what happened there, right?

A Through somebody telling what happened, but as far as facts, no.

TRIAL EXAMINER: Can we have a stipulation on what constituted the adjustment board?

MR. KINTZ: I had hoped we did.

TRIAL EXAMINER: I think perhaps we did. It skipped my mind.

MR. BAHRS: The Joint Exhibit No. 2 provides an adjustment Board in section—

MR. KINTZ: I am prepared to stipulate that we are talking about here, what we are talking about here is a board convening in pursuance to the agreement too.

TRIAL EXAMINER: I want to be able to understand it.

MR. BAHRS: Section 36 of Joint Exhibit No. 2, page 16.

TRIAL EXAMINER: That will be entirely satisfactory. I can now understand it as we go along.

Q (By Mr. Bahrs) On the afternoon of October 16 did you have a meeting or did you participate in a meeting with some representatives of the union?

A On October 16?

Q Yes.

[57] A The only time I saw Mr. Griffith and Mr. Williams was when they came on my job when I running the elevator and they were speaking to me sort of boisterously.

Q They were speaking to you sort of boisterously?

A Yes.

Q Telling you what? Tell us what the conversation was?

A It was why didn't I come to the meeting?

Q What meeting were they referring to?

A The Retailers Council meeting.

Q The Retailers Council meeting?

A Yes, I guess so.

TRIAL EXAMINER: Were you by yourself, addressing you personally was it?

THE WITNESS: Right.

Q (By Mr. Bahrs) Who was present now, you say Mr—.

A Mr. Williams and Mr. Griffith I believe.

Q Was that all the conversation that took place, "Why didn't you go to the meeting"?

A No, that wasn't all. They took me up to Mr. Graff's office and Mr. Ehrenfried was with them and present.

Q Tell us what was said?

A They were asking me why I didn't go and my reason and Mr. Ehrenfried—and I refused to talk and I felt that because Mr. Ehrenfried was present and sort of listening to our arguments or disagreements of why I

didn't do something, go [58] to the meeting, I felt like I didn't want to do this, I know.

Q All right. Now, this conversation took place on the 16th, is that right?

A Yes.

Q Did you appear at the meeting on the adjustment board on the 18th?

A Yes, I did, we did.

Q Did anybody accompany you, sir?

A Yes.

Q Tell us please who they were?

A Hollins, Epps, Washington and myself.

Q And will you tell us what took place at that meeting?

A Mr. Hollins made a statement that we were not going to speak at this meeting as individuals, we were speaking as a group and our main purpose was to talk to the President to try to reach an agreement with him to straighten out the problems and conditions of The Emporium.

Q Isn't it a fact that Mr. Hollins said that the group of four was not going to settle this through the union, that they would talk directly to the President of The Emporium or no one, is that right?

A This is what we wanted to do.

TRIAL EXAMINER: What we want to get at is what was said.

THE WITNESS: I can not tell you word for word.

TRIAL EXAMINER: I don't mean word for word. Did they [59] say that in substance?

THE WITNESS: Beg your pardon?

TRIAL EXAMINER: Did they say that in substance what you just stated?

Read his last answer back, Mr. Reporter.

(Record read)

TRIAL EXAMINER: Thank you.

Q (By Mr. Bahrs) Is it correct to say that you refused to proceed through the adjustment board with the union representing you and you insisted on talking directly to the President of The Emporium, is that correct?

MR. KINTZ Objection.

TRIAL EXAMINER: Break it down.

Q (By Mr. Bahrs) Is it correct to say that Mr. Hollins made the statement on behalf of the four of you that you would not go ahead with Adjustment Board at which time you were represented by the union, is that correct?

A Yes.

MR. HECHT: I would like to lodge an objection to that question as well as the line of questioning, I ask that the line of questioning be stricken. I am sorry I didn't speak earlier. I have been refining the objection in my mind and I would like to state it for the record if I may.

TRIAL EXAMINER: You may.

MR. HECHT: Which is that whatever this witness did or [60] didn't do with regard to his union in order to adjust what he saw as a grievance is of no relevance to the case, that the Board law makes it clear that when employees act in a fashion which is not inimical to the collective bargaining agreement, that they are performing a concerted, protected activity and that what is relevant and what is solely relevant to this proceeding is the activity that Mr. Hawkins engaged in which was fated to be the sole reason for his discharge and that is to say the leafleting.

TRIAL EXAMINER: I am unable to agree. I will overrule the objection.

Q (By Mr. Bahrs) Mr. Hawkins, did Mr. Hollins—at that meeting also state that the group of four of you wanted to talk to the President of The Emporium and wouldn't talk to anybody else, is that right?

A Yes.

Q Well—

TRIAL EXAMINER: To explain my ruling, Mr. Hecht, you have got a phrase, "Inimical" in there that we will have to construe and take the fact on. All of this is quite relevant to the phrase, "Inimical".

MR. BAHRS: Are you through?

TRIAL EXAMINER: Yes.

Q (By Mr. Bahrs) Now, on October 22, I believe you testified that you held a press conference?

[61] A Yes.

Q Is that right?

A Yes.

Q And that you made a statement—was this what was broadcasted by radio and TV?

A TV.

Q TV?

A Yes.

Q Right?

A Yes.

Q Now, I will ask you to examine the text of the leaflets that you handed out, General Counsel's Exhibits No. 3 and No. 5 and ask you whether the statements that were broadcast by TV on the 22nd were in substantially the same language as appears on these two leaflets, is that right?

A Approximately.

MR. KINTZ: I object to this as being immaterial. There is no question in the record that the witness distributed the leaflets, he said he made a statement substantially identical to the contents of one of the leaflets. It seems to me to be totally immaterial whether the television station broadcasted it or not.

TRIAL EXAMINER: What you are saying as a matter of fact is the number of times these statements and the circumstances under which they were distributed other than the distribution [62] to the public of the pamphlets themselves are immaterial?

MR. KINTZ: Correct.

TRIAL EXAMINER: I don't see any objection to having it in the record. Did you broadcast the substance of the statements on your pamphlets?

THE WITNESS: Right.

MR. BAHRS: Well, I believe that the witness has testified the text of the statement that was broadcast is substantially the same as the leaflets, is that right?

TRIAL EXAMINER: That is what I understand.

Now, I suppose it can be argued that this also goes to the reasonableness or unreasonableness. Anyhow, it is in.

MR. BAHRS: That's right.

Q (By Mr. Bahrs) Mr. Hawkins, in the week of October 22, were you employed by The Emporium?

A October 22?

Q Yes.

A Yes, I was.

Q Were you paid for working that week?

A That whole week?

Q Or any part of that week?

A Well, I didn't work 40 hours. I was off on October 22 a half day.

Q But were you paid for working sometime during that week in which you made the broadcast, in which the broadcast was [63] made?

MR. KINTZ: So stipulated.

MR. BAHRS: Will it be stipulated that the witness was also an employee and was paid for the week or weeks in which the leaflets were handed out?

MR. KINTZ: So stipulated.

TRIAL EXAMINER: If you don't say something, Mr. Hecht, I will assume that you agree with the General Counsel and will join in the stipulation?

MR. HECHT: So stipulated.

TRIAL EXAMINER: If you object, you have to speak up.

MR. HECHT: Thank you.

MR. BAHRS: Will it be stipulated also that the leaflets were handed out on November 16 and 23 and December 7?

MR. HECHT: That will not be stipulated to.

MR. BARTON: That is subsequent to the discharge.

TRIAL EXAMINER: There is no stipulation anyhow. Mr. Hecht won't stipulate so—

Q (By Mr. Bahrs) Mr. Hawkins, did you hand out any leaflets on or about November 9 of last year?

A Yes.

TRIAL EXAMINER: You remember the date?

THE WITNESS: Yes, it was a Saturday, November 9.

Q (By Mr. Bahrs) I beg your pardon?

A A Saturday, November 9.

[64] Q Did you hand out any leaflets on November 16?

MR. BARTON: I object to that as being irrelevant. That was subsequent to the discharge.

MR. HECHT: We join in that. We join in that objection.

MR. BAHRS: An accumulative course of action has some bearing on the Witness's right to reinstatement. We admit it.

TRIAL EXAMINER: I don't pass on the probative weight of this, but I don't see any reason why we can't have the dates that the leaflets were passed out. This is a matter of sequence. I think you should show him a calendar.

THE WITNESS: I know the dates.

TRIAL EXAMINER: Do you?

THE WITNESS: Yes.

TRIAL EXAMINER: Was that one of the days that you passed out leaflets?

THE WITNESS: Yes.

Q (By Mr. Bahrs) Did you also pass out leaflets the following date?

MR. HECHT: Same objection.

TRIAL EXAMINER: You may answer, overruled.

THE WITNESS: No.

Q (By Mr. Bahrs) On November 23?

A No.

Q I beg your pardon?

[65] A No, not on November 23.

Q Did you hand out any leaflets on December 7?

MR. HECHT: Same objection.

TRIAL EXAMINER: Overruled.

THE WITNESS: No.

Q (By Mr. Bahrs) Did you hand out any leaflets at any time after November 16?

A No.

MR. BAHRS: I think that is all.

TRIAL EXAMINER: Redirect?

MR. HECHT: Nothing.
MR. KINTZ: Just a moment.
TRIAL EXAMINER: Surely.
MR. BARTON: We have no other questions. We perhaps might want to call him at a later time.
TRIAL EXAMINER: Finish your redirect. You can always call a rebuttal witness.
MR. BARTON: That is what we were talking about. Otherwise we are satisfied.
TRIAL EXAMINER: You are finished with him except for rebuttal?
MR. BARTON: Yes.
TRIAL EXAMINER: You are excused then, sir.

[67] * * * *

JAMES JOSEPH HOLLINS

was called as a witness by and on behalf of the General Counsel, and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Have a seat.

DIRECT EXAMINATION

Q (By Mr. Kintz) State your full name, sir.
A Jim Joseph Hollins.
Q Hollins, H-o-l-l-i-n-s?
A Yes, sir.
Q Where do you live, sir?
A 501 Capp Street.
Q Have you ever been employed by The Emporium, the Respondent in this proceeding?
A Yes, I have.
Q From when till when?
A From—to be exact from November of 1967 until November [68] of 1968.
Q At which location was this you were employed, sir?
A 835 Market.
Q Yes. All right. Did you ever work anyplace else for The Emporium?
A No.

Q What was your position when you started?
A Stock clerk.
Q And when you were stock clerk what were your duties?
A My duties were to carry trucks to the floor, unload them, bring them back and after I was finished with that I worked on either the fourth, the third or second or first floor unloading merchandise on either of those floors.
Q Now, when you have reference to a truck, sir, you have reference to a hand truck, something a person pushes?
A Yes, uh huh.
Q How were you paid, hourly or monthly or—
A Hourly.
Q What was your hourly wage rate when you started?
A $2.25.
Q Were you when you were performing as a stock clerk assigned to any specific area or department?
A Nowhere. Well, let's see. Not specifically because when I first started I would float around and I would work in different places and like for the first few months that I was [69] working, I didn't have any specific area that I worked in.
Q Who told you where to work?
A It would be either Mr. Graff, Mr. Holiday or Mr. Pete Babbs.
Q Would you tell me what each of their titles was?
A Mr. Graff was the manager, Mr. Holiday was the assistant manager and Mr. Babbs was the second assistant manager.
Q Now, at that time if you wanted to take a day off, the following day, who would you ask for time off?
A I would ask Mr. Graff, either Mr. Holiday or Mr. Babbs.
Q If you were sick while you were at work and you had to go home, who would you tell?
A Mr. Graff, Mr. Holiday or Mr. Babbs.
Q If you became sick at home and couldn't come to work the following day who would you contact?
A I would call the medical department.
Q The medical department?

A Yes.
Q At any time while you were employed by the Emporium did you have any conferences or personnel conferences to discuss your work?
A Yes, I did.
Q How many?
A Three.
Q Do you remember when the first one was?
[70] A The first one was in December, no January of 1968.
Q Where did this take place?
A It took place in Mr. Graff's office.
Q Who was present there?
A Mr. Graff, Mr. Holiday, Mr.—I can't think of the other guys name.
Q What was his position, the one you can't think of?
A He was the assistant to Mr. Graff.
Q Now, you said there were three and the second one, about when was the second such meeting?
A The second was in January, February, March—I think it was in March.
Q Who was present on that occasion?
A Mr. Graff, Mr. Holiday and Mr. Babbs.
Q And the third one, when was that, sir?
A The third one was in October of 1968.
Q Who was present then?
A Mr. Squires, Mr. Graff and Mr. Young, Mr. Babbs and those were all the people that were present.
Q Where did these last two conferences take place, the same office?
A Yes, Mr. Graff's office.
Q Did you receive any written ratings or evaluations at any time while you were employed there?
A Yes, I did.
[71] Q How many?
A One.
Q Who gave it to you?
A Mr. Holiday.
Q Did it indicate on that written rating by whom it was prepared?
A Yes, it did.

Q Who prepared it?
A Mr. Holiday.
Q Calling your attention to October 1968 was there any change in your employment status at that time?
A Yes, there was.
Q What was that change?
A I was made a temporary supervisor.
Q Describe for us how that came about?
A The regular supervisor became ill and he had to be absent for a period of time for an operation, Ted Kasemrick?
Q K-a-s-e-m-r-i-c-k?
A Yes.
Q That's close anyway?
A Yes.
Q He became ill and he had to have an operation?
A Yes.
Q Tell us how this came to your attention?
A Well, Mr. Young came to me first and asked me would I [72] like to take the position of temporary supervisor during the time that he was absent and at first I declined the position because I had been passed over before several times for the position of supervisor.
Q Did you tell Mr. Young that?
A Yes, I did.
Q Go on and tell us what was said.
A He decided that he would go back in and tell Mr. Babbs about what I said about the reason of my not wanting to take the position of temporary supervisor and then he came back later on, so did Mr. Graff with Mr. Young and we discussed the whole thing. The thing of the extra money that was involved and I needed it because I wanted to go to school, so I told Mr. Graff that I would take the position, but it would only be on a temporary basis and I told him the reason why I felt like that was the same reason that I stated to Mr. Young.
Q Was there any discussion as to when the temporary position would end?
A Yes, Mr. Graff told me that it would end right after—well as soon as Ted came back.
MR. BAHRS: As soon as who?

MR. KINTZ: As soon as Ted came back is what you said?

THE WITNESS: Yes.

Q (By Mr. Kintz) Had you at any time had conversations concerning a permanent supervisory position?

[73] A Yes, I did.

Q When was that?

A That was about two weeks after I took a temporary position.

Q Who participated in this conversation?

A Mr. Graff and Mr. Young.

Q And you?

A And myself.

Q Where did this take place?

A This took place in Mr. Graff's office.

Q What was said on this occasion?

A It was just said that—well, he thought that I was a very suited person for the job of being a supervisor.

Q Who is he?

A Mr. Graff.

Q Okay.

A And Mr. Graff said that he would like for me to keep the job of supervisor permanently and I told him that I still felt the same way that I stated to him and Mr. Young previously about the thing that had happened between me and them as far as taking a supervisors job and being passed over and I told them I did not want the job.

Q Turning in your mind, Mr. Hollins, if you will, to the period in which you were holding this position of temporary supervisor which began sometime in October, is that right?

A Yes.

[74] Q Do you recall the date?

A No, I can't recall the date.

Q Now, you have told us what your duties were before you became a temporary supervisor. Tell us how, if at all, your duties differed when you became a temporary supervisor.

A I had the responsibility of seeing to it that the entire third floor in which I was a supervisor and that

all the people working in the third floor marking area besides the people who were working in marking area, in receiving, who were under another department, but other than that I had to see that all these people kept the merchandise coming in and going out and correctly sent out and that the merchandise that was being sent out, that it was all correctly there, and, you know, was promptly accounted for.

Q At the time you were a temporary supervisor did you continue to do any of the duties you used to do before?

A Yes, I did.

Q What percentage of your time did you work at actually moving the merchandise yourself after you became a temporary supervisor?

A I would say anywhere from 70 to 80 percent of my time.

[75] • • • •

Q (By Mr. Kintz) When was the last day on which you were employed by The Emporium?

A The last date I was employed by The Emporium was in [76] November, November 11—the 9, November 9.

Q Well, we will return to that in a moment.

MR. BAHRS: I will stipulate to the date.

MR. KINTZ: What is the date?

MR. BAHRS: The 11th. The 9th was the date you put out the handbills. You were fired the following Monday morning.

THE WITNESS: I was fired the following Monday which was the 11th, so the last day I worked was the 9th.

MR. HAWKINS: Actually the 8th.

THE WITNESS: Yes.

MR. KINTZ: You correct me, Mr. Hawkins. Thank you.

Q (By Mr. Kintz) Directing your attention to the second of November 1968, did you distribute leaflets in front of The Emporium on that date?

A Yes.

Q Well—

A What date was that again?

Q November 2?
A Yes, I did.
TRIAL EXAMINER: I will assume that this isn't in dispute that he distributed circulars on certain dates, you can stipulate.
MR. KINTZ: Yes.
MR. BAHRS: General Counsel's 3 and 5?
MR. KINTZ: Yes.
[77] MR. BAHRS: We will stipulate.
MR. KINTZ: We will stipulate on November 2 he distributed General Counsel's 3.
MR. BAHRS: Yes.
MR. KINTZ: And that subsequently on November 9 he distributed General Counsel's 5.
MR. BAHRS: Right.
MR. KINTZ: Right.
TRIAL EXAMINER: Do you want to stipulate where he distributed it?
MR. KINTZ: Maybe we ought to bring that out.
MR. BAHRS: On the sidewalk in front of one of the regular entrances of The Emporium.
MR. KINTZ: That is not entirely complete. Maybe I had better ask. I appreciate the offer.
MR. BAHRS: All right.
Q (By Mr. Kintz) Calling your attention to November 2 when you distributed leaflets during what period of time did you distribute it?
A It was from 9:30 until 6:00 o'clock p.m.
Q Where did you distribute them specifically that day?
A The main entrance in front of The Emporium.
Q Were you alone or with someone else?
A I was alone in the specific area that I am speaking of now.
[78] Q Did you observe any other persons distributing any leaflets on that day?
A Yes, I did.
Q Who?
A Myself, Mr. Hawkins, Mr. Epps, Mr. Washington and another young lady who works there, I can't think of her name.

Q Where in relation to the entrance of The Emporium were you distributing leaflets on the 2nd?
A On the 2nd?
Q Yes. November 2nd.
A Main entrance.
Q Where abouts in relation to the main entrance on which side as you face it?
A The front, right in the middle, around the middle entrance right in front of the store.
TRIAL EXAMINER: Facing Market Street?
THE WITNESS: Yes, facing Market Street.
Q (By Mr. Kintz) Were you scheduled to work on that day, by the way?
A No, I wasn't.
Q Did you notice anyone having any difficulty entering?
A No.
Q Getting by you in distributing leaflets?
A No, I didn't notice.
Q Did you have any conversations with any passers-by or [79] customers on that day?
A Yes, I did.
Q Did you at any time raise your voice?
A Once.
Q What was the occasion for that?
A Well, a lady approached me and asked me why don't I go back to Africa and she was walking out and she was going fast and I told her, I shouted, "I would go if she would give me the money."
Q At any time while you were there distributing leaflets, did you use any obscene or foul language?
A No, I didn't.
Q At any time while you were out there distributing leaflets did you advocate or participate in any violence?
A No.
Q Now, prior to the distribution of the leaflets, which is General Counsel's Exhibit No. 3 in evidence in this proceeding, did you have occasion to release it or similar material to news media?
A Yes, I did.
Q When was that?

A I can't remember.
Q All right. Approximately how long before you distributed the leaflet did it happen?
A It was the Tuesday before the Saturday that I distributed [80] the leaflet.
Q Where did this happen?
A It took place at the newspaper—
Q The Sun-Reporter?
A Yes.
Q Who was present there on that occasion?
A KDIA radio, Channel 2, Channel 4, myself, Mr. Hawkins, Mr. Epps, Mr. Washington and, who else was there? There was somebody there from The Emporium too, I believe.
Q Tell us what occurred. What was said on this occasion?
A We were asked—
Q Who asked you?
A People from Channel 2, Channel 4 and KDIA, they asked us why we were planning on boycotting The Emporium for what reasons and we explained it to them and we read the leaflet to them. We gave a general statement of what we were planning on doing and why.
Q What did you say you were planning on doing and why?
A We were planning on leafleting and boycotting the store because we felt that employees were not being treated fairly, minority employees were not being treated fairly as far as working conditions was concerned.
TRIAL EXAMINER: Off the record.

(Discussion off the record)

TRIAL EXAMINER: Back on the record.
[81] Q (By Mr. Kintz) Did you finish your answer?
A Yes, I did.
Q Did you at any time during the course of this conversation criticize The Emporium's products or services to their customers?
A No.
Q At any time during this news conference did you urge violence?

A No.
Q Did you use any vile or obscene language during this news conference?
A No.
Q After you had this news conference, distributed these leaflets, did anyone from The Emporium discuss the matter with you?
A Yes, Mr. Ehrenfried did.
Q When was this?
A This was the following Thursday after the 2nd, so that would make it—
MR. KINTZ: Here, George.
MR. BAHRS: Thank you.
Q (By Mr. Kintz) Where did this occur?
A This occurred in Mr. Ehrenfried's office.
Q Who was present there?
A Myself, Mr. Ehrenfried and one of his secretaries.
[82] MR. KINTZ: May the record reflect, Your Honor, I am now showing the witness a document which I have marked as General Counsel's 8 for identification purporting to be directed to the witness from the Respondent in this proceeding.

(The document above referred to was marked General Counsel's Exhibit 8 for identification.)

Q (By Mr. Kintz) I now show you General Counsel's 8 for identification, Mr. Hollins, and ask you if you have ever seen that document before?
A Yes, I have.
Q Can you tell us what it is?
A This was issued as a warning, you know, not to participate.
Q When did you get it?
A When did I get it?
Q Yes.
A The 7th.
Q Was this document given to you at the meeting that you just mentioned with Mr. Ehrenfried?
A Yes, it was.
Q Will you tell us was anything said besides being presented with a document?

A No, besides that if I participated again I would be fired.
Q Who said that?
A Mr. Ehrenfried. No, I am wrong, I will say that he didn't say I would be fired, he said there was a possibility of me [83] being discharged.
Q Did he say if you participated in what, did he explain?
A No, he didn't go into detail about it.
Q And he handed you this document on that occassion, right?
A Yes, he did.
Q Now, after you received that document which is General Counsel's 8—
MR. KINTZ: I will offer General Counsel's Exhibit 8.
MR. BAHRS: No objection.
TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 8, was received in evidence.)

Q (By Mr. Kintz) After you received General Counsel's Exhibit 8, Mr. Hollins, did you distribute any more leaflets?
A Yes, I did.
Q When?
A The following Saturday.
Q Where?
A The main entrance on Market Street in front of The Emporium.
Q Was anyone else—did you distribute them anyplace besides the main entrance?
A Yes, I did, the two side entrances on Market Street too.
Q Did you observe anyone else distributing leaflets on that day?
[84] A Yes, I did, myself, Mr. Hawkins and some members who were from the Afro-American Institute.
Q They were not employees?
A No, they were not.

Q Now, on this occasion did you notice anyone having difficulty getting by where you were handing out the leaflets?
A No, I didn't.
Q On this occasion did you raise your voice at any time?
A No.
Q Did you use any vile or obscene language at any
A No.
Q Did you criticize the products or the services of The Emporium to its customers?
A No.
Q Now, after you received—after you distributed this second leaflet, which is General Counsel's 5 in evidence, the second occasion, did you have any further discussion with The Emporium concerning the activities?
A Yes, I did.
Q When was that?
A That was the following Monday.
Q All right. Where was this?
A Mr. Ehrenfried's office.
Q Who was present?
A Myself, Mr. Ehrenfried and one of his secretaries.
[85] Q What occurred on this occasion, sir?
A He served me a notice of termination.
MR. KINTZ: I have marked for identification, Your Honor, as General Counsel's 9 a document purporting to be a change of status form on the stationery of the Respondent in this proceeding, directed to this witness.

(The document above referred to, was marked General Counsel's Exhibit 9 for identification.)

Q (By Mr. Kintz) I now show you General Counsel's 9 for identification, Mr. Hollins, and ask you if you have ever seen that document before?
A Yes.
Q Is that the notice that you had reference to in your testimony a moment ago?
A Yes.
MR. KINTZ: I will offer General Counsel's 9.
MR. BAHRS: No objection.

TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 9 was received in evidence.)

MR. KINTZ: Your Honor, at this time I propose that as we did with the prior termination slip that the record include a stipulation as to the language of General Counsel's 9 as it too is somewhat illegible.

I propose a stipulation that the "Remarks" portion of [86] offered document, General Counsel's 9 read as follows: "You are being discharged today." "Distribution of 'Boycott Emporium' literature on Saturday November 9, 1968 in front of The Emporium, 835 Market Street, San Francisco, or S.F., pursuant to written warning dated 11/7/68 for similar action on 11/2/68."

MR. BAHRS: So stipulated.

MR. HECHT: So stipulated.

MR. KINTZ: Thank you, Mr. Bahrs and Mr. Hecht.

TRIAL EXAMINER: The stipulation is received.

Q (By Mr. Kintz) Now, I have noted from your testimony and from the text of the leaflets you distributed what I believe could be fairly characterized as an accusation by you that The Emporium was discriminating against you because of race. What, if any basis did you have for that assertion?

A Well, myself for one.

Q When you say yourself, what do you mean?

A Well, I was told once not to come on the main selling floor because my hair, you know wasn't cut the way that they though that it should be cut.

Q Who told you this?

A I was told by my supervisor, but he told me he was authorized by Mr. Hoekenga—

Q What was that name?

A My supervisor?

[87] Q What was the name?

A John Crockett.

Q What is his position?

A He was the supervisor at the time.

Q What was the other name?

A Mr. Hoekenga.

MR. BAHRS: H-o-e-k-e-n-g-a?

THE WITNESS: Yes.

Q (By Mr. Kintz) Do you know what his position is?

A I believe it is general manager.

MR. BAHRS: That is a minority name also.

Q (By Mr. Kintz) For clarity of the record, with reference to your hair, is that what is known as a natural hair cut?

A Yes, it is.

MR. KINTZ: The record doesn't illustrate it so we have to have some idea.

Q (By Mr. Kintz) Had you had any other basis, any other personal basis or experience?

A Yes, that was one of the reasons why I was refused a supervisors job previously before the time that I was offered the temporary supervisors job was because of my hair.

TRIAL EXAMINER: That is a conclusion of the witness which has no probative weight.

MR. KINTZ: I agree.

Q (By Mr. Kintz) What were the circumstances that led you [88] to make this statement?

A It was on my rating. Mr. Holiday, who presented you with the ratings specifically stated this to me.

Q That was the conference about the rating that you described earlier in your testimony?

A Yes, it was.

TRIAL EXAMINER: What did he say to you?

THE WITNESS: He told me that there was some supervisors job open that they were considering me very highly to become a supervisor because I had all the qualifications, but I had to do something about my hair.

TRIAL EXAMINER: Is that all he said?

THE WITNESS: That's all he said.

Q (By Mr. Kintz) Other than your personal experiences, did you have anything else that you thought gave you a basis for the charge that The Emporium was discriminating?

A Yes, there were several other people, minority people in the store who we made a survey of who told us of discriminatory acts that were brought up against them.

Q You just told us two things. You said, "We" and you said "We made a survey".

A Yes. Me, myself, Mr. Hawkins and Mr. Washington.

Q Would you describe when this so-called survey took place?

MR. KINTZ: I'm sorry, Mr. Examiner, did you have something?

TRIAL EXAMINER: I was just going to say get some date.

[89] MR. KINTZ: Yes.

THE WITNESS: I can't remember any specific dates. I wouldn't want to say.

Q (By Mr. Kintz) Can you place it in relation to, let's say, the press conference? Was it before or after the press conference?

A After the press conference.

Q Do you know whether it was before or after the first time you distributed the leaflets?

A It was right after we distributed the first one, I believe.

Q All right. Now, you said you conducted a survey. Will you tell us precisely what you did and where you did it?

A We went around to all the stock areas and selling areas and stock areas to just minority people all over the entire—different areas and found out their opinion of, you know, the way minority people were being treated as far as promotions and advancements and so forth were concerned on the job.

Q Did you have a group, you say you found out their opinion.

A Yes.

Q Did you ask them questions?

A Yes.

Q Did you ask them a group of questions or did you just interview them without a group of questions?

A Some we had specific questions that we were asking and others we just asked questions at random to find out their [90] opinion.

Q Approximately how many people did you talk to in the course of this investigation?

A About 4.

Q Do you know how many people were talked to altogether?

A No, I wouldn't want to say.

Q How many people participated in the process of questioning the employees?

A I would say about 8 or 9 people or maybe more, I am not sure.

Q Did you make any record or compilation of this?

A Yes, we did.

MR. KINTZ: Your Honor, I have marked for identification as General Counsel's Exhibit 10 a document with numerous pages, the first page of which is entitled, "Briefing on Conditions", and I would like now to show the witness General Counsel's 10 for identification, asking Mr. Hollins if he has ever seen that document before.

(The document above referred to was marked General Counsel's Exhibit 10 for identification.)

Q (By Mr. Kintz) Have you ever seen that document before?

A Yes.

Q Where and under what circumstances did you first see it, sir?

A Well, under the circumstances I first saw it is when we [91] were making the survey.

Q What is this document?

A Well, it is concerning the conditions of the minority employees and what was taking place among minority employees.

Q Do you know how this document was prepared?

A Do I know how?

Q Yes, General Counsel's 10?

A Well, we took, like I said, we took the survey and then it was signed out.

Q This is the results of the survey then?
A Yes, it is.
Q All right, at least in part the results of the survey?
A Yes.
Q Do you know who actually physically prepared it and typed it up in the form it now appears in?
A No, I don't know.
Q Did you work on it in any way in putting it together as it appears here?
A Yes.

MR. KINTZ: Your Honor, I will offer General Counsel's 10.

MR. BAHRS: For what purpose now, may I ask?

MR. KINTZ: It is offered for the purpose, Your Honor, of demonstrating that the witness and previous witness, Mr. Hawkins, both had a reasonable, good faith basis and had undertaken a reasonable and good faith effort to determine the existence [92] of a problem before they engaged in the protected, concerted activity.

• • • •

[97] TRIAL EXAMINER: It has already been ruled on. It is received for the limited purpose. I don't exclude you from proving it, that these things are all facts.

MR. HECHT: I understand.

(The document above referred to, herctofore marked General Counsel's Exhibit 10 was received in evidence.)

• • • •

[104] Q (By Mr. Kintz) All right. Now, there has been some discussion before you testified, Mr. Hollins, that the matters raised by your leaflets and the entire question of racial discrimination was a question that has been discussed with the union by certain of your coworkers. Did you at any time discuss any of these matters with any representative of the union?
A Yes, I did.

• • • •

[107] Q (By Mr. Kintz) When was the first contact you had with the union concerning the matter of the

acquisition that the Emporium was discriminating based on race?
A The first actual contact I had with them was—it was about April, May, it was in May.
Q 1968?
A Yes.
Q And who was present? How did this come about?
[108] A At that time Mr. Williams was the only person present.
Q Who is Mr. Williams?
A A representative of the union.
Q Where did this take place?
A At the store, The Emporium downtown.
Q What was said?
A He asked about me personally. He didn't ask anybody else. He came to me personally and asked me about how I felt about the way that the employed minority employees were being treated and he asked me if I felt there was discrimination being carried on within the store and I told him yes, I did. He said that they were going to try to see if they could do something to straighten it out, they were holding meetings later on to that effect. They would be getting us all together to discuss it.

TRIAL EXAMINER: You have gotten an approximate date?

MR. KINTZ: Yes, I believe the witness said May.

TRIAL EXAMINER: My inadvertence.

Q (By Mr. Kintz) This was May as you recall?
A Yes.
Q Can you give us a more precise date?
A The exact date?
Q Yes.
A No.
Q After this did you have any further contact with any [109] representative of the union concerning this?
A No—yes. Mr. Williams, again, me, Mr. Hawkins and Mr. Washington, Mr. Epps and Mr. Young, we all met with Mr. Williams over at the cafeteria, right around the corner from the Emporium. We met there and we had a discussion about the problem of racial discrimination being carried on in the store and so forth.

Q When was this, Mr. Hollins?
A That was about the last part of May.
MR. BAHRS: I beg your pardon.
MR. KINTZ: About the last part of May.
Q (By Mr. Kintz) That is what you said, right?
A Yes.
Q 1968?
A Yes.
Q What was said on this occasion?
A We just discussed the matter of, you know, racial discrimination existing within the store and he told us that, you know, the union was working and seeing if they could try to talk with personnel and management, you know, to try and straighten things out, and so forth and so on. I don't remember exactly what he said about it. He said that we were supposed to have another meeting later on, you know, to try to work things out and straighten it out and so forth.
Q Did you have any other meeting later on?
[110] A The only other one that I attended after that one was the one that was in September, September 3 to be exact.
Q Where did this take place?
A It took place at the union hall.
Q Who was present there on that occasion?
A Myself, Mr. Hawkins, Mr. Young, Mr. Washington, Mr. Epps, and what is the other gentleman's name? I can't think of the other guy's name, the guy from the EOC and Mr. Johnson was there.
Q Who is Mr. Johnson?
A The President of the union.
Q All right.
A And Mr. Williams, the representative of the union was there also.
Q What happened on this occasion?
A Yes, and there was a guy from the Fair Employment Practices Committee.
Q Have you told us everyone who was there as best you can recall?
A Yes, sir, as best as I can recall.
Q Tell us what was said, what happened?

A We discussed the problem of racial discrimination and namely the topic of Russell Young, Mr. Young being passed over for a promotion that had been given to someone else, somebody else previously from outside.
[111] Q Who is Mr. Russell Young?
A He is first assistant manager at The Emporium now.
Q Was anything else discussed?
A No, that was the basic thing that we discussed, the problem of racial discrimination, Mr. Young being passed over.
Q After this did you attend any further meetings at which any representatives of the union were present?
A Yes, I did.
Q When was the next session?
A It was at the Retailers Council.
Q When?
A That was in November. Yes, it was in November. I can't think of the exact date. Mr. Williams was present from the union. He was there.
Q Yes.
A And I can't think of the guy's name over there in the dark suit.
Q There is a gentleman in the room you now identify?
A Yes.
Q Who was he representing as you understand it?
A The union.
Q Tell us what occurred on this occasion?
A They wanted to settle our grievances as far as our problem.
Q Did someone say they wanted to do this?
[112] A Yes, Mr. Williams did. That is why they had met was to see if they could work out the differences that we had, as far as our grievances, as far as racial discrimination was concerned and that they were going to see if they could straighten it out, at this Retailers Council.
Q What else was said?
A That is about all.
Q Did you stay for the whole meeting?
A No, we did not.

Q When you say, "We", did not, did you leave as a group?
A Yes.
Q Who was the group that left?
A Me, Mr. Hawkins, Mr. Epps and Mr. Washington.
Q Did you or any member of that group make any statement in this meeting?
A Yes, I did.
Q What did you say?
A I said that we didn't want to stay for the meeting that we didn't feel like the meeting was really representing us because they wanted to take our case as an individual thing and we were fighting it as a whole, not an individual case.
Q Did you say anything further?
A No, that's all we said.
Q Do you recall any mention about what you wanted to do about it?
[113] A No.
TRIAL EXAMINER: Would you explain to me a bit further about what you meant by taking it as a whole?
THE WITNESS: Yes, when we first came in, Mr. Williams, the representative from the union, he began to take each person's grievances individually and as soon as he started doing that is when I started to make the statement I made.
TRIAL EXAMINER: I know. I don't think I quite understand what your position was when you said taking them, "As a whole". What did you mean the four of you or all of the minority groups?
THE WITNESS: All of the minority groups.
TRIAL EXAMINER: You wanted to treat it as a grievance affecting all minority groups, is that right?
THE WITNESS: Yes.
TRIAL EXAMINER: I want to get your position clear.
THE WITNESS: That's right.
Q (By Mr. Kintz) As I understand—
TRIAL EXAMINER: I take it your contention being that all of the minority groups were being discriminated against, is that right, was that your position?

THE WITNESS: Yes.
Q (By Mr. Kintz) Just to carry it one step further, it was my understanding that what you were trying to do and you didn't want a solution of the problems of individuals, you wanted some basic change that would benefit the treatment of all [114] minority people, is that right?
A That's correct.
Q All right. Did you attend any other meetings where any other representatives of the union were present?
A No, that was the last that I can recall.
Q Now, I show you General Counsel's 7 and ask you if you have ever seen that document before, Mr. Hollins?
A Yes, I have.
Q Where and under what circumstances did you first see that?
A This was issued out by Mr. Williams to some employees at the store.
Q I'm sorry?
A It was issued out by Mr. Williams, the representative of the union to some of the employees of the store and I am not sure about this, but I believe it was posted too.
Q At the store?
A At the store, yes.
TRIAL EXAMINER: I don't know. This is dated, I notice this is dated April 11, is that correct, sir?
MR. KINTZ: Yes, that is my understanding of the correct date, but I have no personal knowledge.
TRIAL EXAMINER: It is so long before the events here that I just wondered.
MR. KINTZ: If you recall the testimony of the witness, his initial conversation with the union goes back to this [115] period, both witnesses.
TRIAL EXAMINER: You put this into show the historical background I take it?
MR. KINTZ: I put it in for another reason that satisfies the basis of Tanner that someone else believed it.
TRIAL EXAMINER: Yes, I know. Proceed.
Q (By Mr. Kintz) Do you recall about when that was that you first saw General Counsel's 7?

A It was about four days after the meeting had taken place.

Q That was the meeting back in April?

A Yes.

Q Somewhere around the date that appears on the document, is that which is April 11?

A Yes, April 11.

MR. KINTZ: No further questions, Your Honor.

TRIAL EXAMINER: Okay. Mr. Hecht, do you have some questions?

MR. HECHT: I would like to have just a minute with Mr. Kintz.

TRIAL EXAMINER: Yes, you may.

MR. HECHT: I have no further questions, Your Honor.

TRIAL EXAMINER: I think we might take a 15 minute recess.

(Short recess)

TRIAL EXAMINER: On the record. Cross-examination, Mr. Bahrs?

[116] MR. BAHRS: Yes.

CROSS-EXAMINATION

Q (By Mr. Bahrs) Mr. Hollins, I believe that you testified that a representative of management of The Emporium told you that you were suited to act as a superintendent?

MR. KINTZ: Supervisor.

Q (By Mr. Bahrs) Supervisor?

A Yes.

Q And that you were made a temporary supervisor?

A Yes, I was.

Q You say you couldn't recall a date. Was it before the date that you had this press conference?

A Yes, it was.

Q And it was before the date that you distributed the leaflets, is that right?

A Yes, it was.

Q Could you tell us how—thereafter I believe you were informed that you were eligible for a position—for a permanent position as a supervisor, is that correct?

A Yes.

Q I ask you to tell us how long before the press conference this conversation took place?

A Not definitely. I can't tell you definitely. I know I can say approximately, however.

TRIAL EXAMINER: Was it a matter of weeks, days, months?

[117] THE WITNESS: It was about three weeks.

Q (By Mr. Bahrs) About three weeks?

A Yes.

Q As I understood your testimony, and you correct me if I am mistaken, you were offered this position as a supervisor on a permanent basis and you refused it, is that correct?

A Yes, I did.

Q Did you continue to act as a supervisor on a temporary basis?

A After that?

Q Yes.

A Yes, I did.

Q Did you continue to act as a supervisor—were you acting and paid as a supervisor at the time of the press conference?

A Yes, I was.

Q And also at the time that you distributed the leaflets?

A Yes.

Q And at the time that you were discharged, is that correct?

A Yes.

Q Now, I believe in your direct testimony you stated that you and the other three members of this group of four employees believe that the minority employees were not being fairly treated at The Emporium?

A Yes.

[118] Q Is that right?

A Yes.

Q And that is what you publicized at the press conference and by the leaflets, is that correct?
A Yes.
Q Did you ever present such a grievance to any representative of The Emporium?
A Wait a minute. I don't understand what you are saying.
Q Well, how far—do you remember that you had a conference that The Emporium wasn't treating the minority employees properly?
A Yes.
Q Did you ever tell Mr. Ehrenfried or Mr. Henderson or anybody with The Emporium that this was going on?
A Yes, I did.
Q Who did you tell that to?
A Mr. Henderson, I talked with him once.
Q I beg your pardon?
A Mr. Henderson, I talked with him once.
Q When was this?
A I can't remember the exact date.
Q Was it before or after you had the press conference?
A Long before I had the press conference.
Q Do you recall refusing to talk to Mr. Henderson on one occasion?
[119] A Yes, I did.
Q Would you tell us when that was?
A I went up to see Mr. Batchelder.
Q B-a-t-c-h-e-l-d-e-r?
A Yes.
Q Who was the President?
A Yes.
Q You went to see Mr. Batchelder, the President?
A Yes, I did.
Q Was this after the 16th of October between the 16th and the 18th?
A I can't say for sure.
Q Do you remember whether it was before or after you appeared at the Adjustment Board?
A I can't say for sure.

Q Was it before that time?
A Yes.
Q Somewhere around there?
A Yes.
Q You tell us please what you did and what happened.
A I just went up and I told him, Mr. Batchelder, that is, I said, "I want to talk about a situation that I felt should be discussed about things that were happening among minority employees at the store." He said that he didn't want to talk. He told me that Mr. Henderson took care of problems like that.
[120] Q Do you know Mr. Henderson's position there?
A Yes.
Q What was it?
A I believe the personnel director.
Q Personnel director?
A Right.
Q And is it correct that Mr. Batchelder invited you to discuss these problems with Mr. Henderson?
A Yes, he did.
Q And that you refused to do so, is that correct?
A Yes, I did.
Q Now, you attended a meeeting with the union at which a number of employees were present and a number of union officials. I believe you stated sometime in May 1968, is that right?
A Yes.
Q And at that time did you and the other employees relate to the union officials that you believed that there were acts of discrimination by The Emporium against minority employees, black, yellow, brown, red and so forth?
A Right.
Q Right. And did the union officials at that time say that they would attempt to discuss these with The Emporium and to correct them?
A Yes.
Q They did, they told you that?
[121] A Yes.
Q Did you have another meeting later in September?

A Yes.
Q At which you discussed the same matter?
A Yes.
Q And did—were the—did the employees present at that meeting again inform the union officials of acts that they considered were discrimination by The Emporium?
A Yes.
Q Did the union officials tell you that they were going to correct these through the processes under the union contract?
A Yes.
Q They did, right?
A Yes.
Q What did you say at that time?
A At this meeting on September 3?
Q Right.
A I didn't say anything personally.
Q Then you had a meeting in the cafeteria with the four union officials, is that right?
A Wait a minute, that wasn't after then, that was before then.
Q After what was that?
A The September 3 meeting, we didn't have a meeting in the cafeteria with them.
[122] Q Do you remember ever having a meeting in a cafeteria with two or three union officials?
A Yes, uh huh.
Q Do you remember when that took place?
A Yes, I believe it was sometime in May.
Q Oh, I see. I was going to say it was early in May, is that right?
A Yes.
Q This was one of the first meetings that you had, is that right?
A Yes, it was.
Q Now, do you recall that—did the union ever tell you that they had a group of eight employees that they were going to present a grievance for, the union was going to appear on behalf of eight employees who had grievances against The Emporium?
A I don't recall that, no.

Q Well, do you know that there were four employees who appeared at an Adjustment Board hearing on October 16?
A Four employees?
Q Four employees.
A Employees?
Q Yes, four minority—
A Yes.
Q And they testified, is that right?
[123] A I don't know, I wasn't there.
Q All right, but you know that they appeared, right?
A Yes.
Q And you and Mr. Hawkins and Mr. Epps and one other person, did you tell the union that you were not appearing except as a group of four?
A Yes.
Q You did, right?
A Yes.
Q And was a meeting of the Adjustment Board scheduled for October 18th?
A Yes.
Q And did you attend that meeting?
A There was one that we didn't attend.
Q All right. Now, that was on the 16th. This is two days—
A Yes, we attended that one.
Q The other four people attended on the 16th. You four, you, Mr. Hawkins, Mr. Epps and who was the fourth one?
A Mr. Washington.
Q All right, and Mr. Washington, right?
A Yes.
Q And the four of you were there and the union undertook to proceed on this Adjustment Board hearing and did you make a statement at that time?
A Yes, I did.
[124] Q Would you tell us please what you said?
A I said that we didn't want to have our case taken as an individual thing as I stated before, we all wanted it taken as a whole for the entire betterment of the minority groups of black, brown, red and yellow people there at the store.

Q By that did you mean that you objected to the four of you presenting your case at the same time?
A The four of us presenting our case at the same time?
Q Yes.
A No.
Q Well, didn't you—do you remember what statement you made at the meeting?
A The one I just mentioned.
Q Yes. Did you say at that time that you were going to take—the four of you were going to take this up with the President of the Emporium?
A The President?
Q Yes.
A No, we said we would like to have a meeting with the President, yes, but—
Q Well, didn't you say that you wouldn't continue further with the union before the Adjustment Board?
A That we wouldn't—
Q That's right.
A No, we never did make that statement.
[125] Q Well, didn't the four of you walk out?
A Yes.
Q All right. And didn't you say that you wouldn't go ahead with the Adjustment Board hearing?
A Yes.
MR. BAHRS: I think that is all.
Q (By Trial Examiner) You testified, I believe that at the time you were discharged you were temporary supervisor being paid supervisory wages, is that correct?
A That's correct.
Q I think the prior witness testified something about supervisor badges. Are supervisors normally supplied with badges stating that they were supervisors?
A Yes.
Q Had you been supplied with one?
A No, I hadn't.
Q Had you been protesting saying that you had not been supplied with one?
A Yes, and I had a lot of trouble getting my status changed. I had a lot of trouble getting my badge and plus my status changed.

Q Did you ever get your badge?
A No.
Q Do The Emporium supervisors wear badges or do you know?
A No, I couldn't say.
[126] Q As I understood your testimony, you refused to have them make you a permanent supervisor?
A Yes.
Q You were willing to be a temporary supervisor?
A Yes.
Q You took the place of somebody who was sick?
A Yes.
Q At the time you were discharged was he still sick?
A No, he wasn't.
Q Had anybody been named permanent supervisor to take his place?
A No, he came back.
Q He did finally come back?
A Yes.
Q Was that before you were discharged?
A Yes.
Q Did you continue to act as a temporary supervisor after he came back?
A Well, not in the same department, yes, I did.
Q He didn't come back to his same old job then?
A Yes, he came back to his same job he had but I was transferred.
Q Was that after he came back that you were transferred?
A Yes.
Q But when you were transferred you were still acting as a temporary supervisor drawing supervisor wages, is that correct?
[127] A Yes, uh huh.
TRIAL EXAMINER: Any questions?
MR. KINTZ: Yes.

REDIRECT EXAMINATION

Q (By Mr. Kintz) Mr. Hollins—
TRIAL EXAMINER: By the way, you used the word temporary. Had you been told when that status was to be concluded, that is before you were discharged?

THE WITNESS: Yes.
TRIAL EXAMINER: What did they say about it?
THE WITNESS: Mr. Graff told me—I was working similar to the tire department and he told me it would be just until after Christmas.
TRIAL EXAMINER: Who told you that?
THE WITNESS: Mr. Graff.
TRIAL EXAMINER: Proceed, Mr. Kintz.
MR. KINTZ: No further questions.
MR. BAHRS: Well, I call—
TRIAL EXAMINER: You are excused.

(Witness excused)

MR. BAHRS: I call Mr. Johnson.
TRIAL EXAMINER: Is the other counsel resting?
MR. KINTZ: Yes, Your Honor.
TRIAL EXAMINER: Does the Charging Party rest?
MR. HECHT: We rest.
[128] TRIAL EXAMINER: All right. Now, we are now on Respondent's case in chief.
MR. BAHRS: I call Mr. Johnson.
TRIAL EXAMINER: Come forward, sir, and raise your right hand and be sworn.
Whereupon,

WALTER L. JOHNSON

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows,

DIRECT EXAMINATION

Q (By Mr. Bahrs) Mr. Johnson, for the record would you give us your name and address and what is your occupation?

A Walter L. Johnson, 334 Holly Avenue, South San Francisco, employed by the Department Store Employees Union, Scretary-Treasurer.

Q And were you Secretary-Treasurer at all times in 1968?

A Yes.

Q Would you—I will show you Joint Exhibit No. 2 which purports to be a copy of the collective bargaining agreement with the San Francisco Retailers Council and ask you if that is a true copy of the agreement that was in effect between the Department Store Employees Union Local 1100 and San Francisco Retailers Council on behalf of a group of stores including The Emporium as shown on page 25 of the document?
[129] A Yes.
Q Was this contract in effect at all times from and after December 29, 1967 up to date?
A Yes.
Q Is there a provision in there would you point out that to us?
TRIAL EXAMINER: Counselor we have this in evidence you know.
MR. BAHRS: Yes.
TRIAL EXAMINER: All you have to do is refer to it.
MR. BAHRS: Yes, that's correct.
Q (By Mr. Bahrs) Is there a provision in there—
TRIAL EXAMINER: You can point it out to him.
MR. KINTZ: I will stipulate.
Q (By Mr. Bahrs) With respect to the subject of racial discrimination.
A I think it is listed under general working conditions.
Q Would you look at it please?
TRIAL EXAMINER: Cite it. It is in evidence.
MR. BAHRS: All right.
THE WITNESS: Page 10.
Q (By Mr. Bahrs) Page 10, right?
A 21E.
MR. BAHRS: "No person shall be discriminated against in regard to hire, tenure of employment or job status by reason [130] of race, color, creed, national origin, age or sex."
Q (By Mr. Bahrs) That has remained in effect throughout the life of the agreement of General Counsel's Exhibit 2, is that right?
A Yes.

Q Now, you are familiar with these two gentlemen, Mr. Hawkins and Mr. Hollins, is that correct?

A I know them, yes.

Q Do you know what classification of work they perform in The Emporium?

A Reserve stock.

Q Is that one of the classifications that is included in the collective bargaining agreement, Joint Exhibit No. 2? Is that right?

A Yes.

Q Did you have any meetings with Mr. Hollins and Mr. Hawkins and others in which they related to you grievances concerning discrimination on the part of The Emporium?

A Yes.

Q Would you tell us please the first of those meetings, when and where, and who was there and—

MR. HECHT: I will renew my objection that I made earlier to this line of questioning.

TRIAL EXAMINER: You may have a continuing objection, Mr. Hecht.

[131] THE WITNESS: If it be okay I can summarize most of it I think.

Q (By Mr. Bahrs) That's all right.

MR. KINTZ: No objection.

THE WITNESS: Okay. I think in order to get the proper context we have to go back into 1967 where we had signed the union shop agreement with the department stores.

Prior to this time it was an open shop situation and in the nonselling areas we had some people. We were better organized in the selling areas and we had picked up several members prior to the union shop going into effect and after in the non-selling areas, some had been there a long time and had finally joined the union and had become participating members.

One man in the stock department had signed up about 15 of them and he asked if we would arrange a meeting to discuss certain grievances that existed in the stock area.

At the first meeting, I think it was in April, April 3, I believe—

TRIAL EXAMINER: 1967, '68?

THE WITNESS: '68. At this meeting the group presented a paper with 10 or 11 grievances on it that they wanted to have looked into. Among the—

Q (By Mr. Bahrs) Excuse me, sir. Were all the members of the group employees of The Emporium?

[132] A Yes.

Q In the classifications covered by the agreement, is that right?

A They were either working in stock or marking areas.

Q I see. Thank you.

A At this meeting they had the group of grievances. We took two or three and then I think number 10 was the one dealing with race discrimination and it was the general consensus of the opinion that of those present that there were less opportunities for those who were in the minority race, not only Negroes, but we had Filipinos and all different groups represented.

Among the grievances mentioned were the facts that they had probably not proper treatment from the supervisors and also not the opportunity for promotion.

We met for sometime that evening and that at that time we selected a committee to go into it further.

From the minutes of the meeting I drew up a document that has been—this is not the original document that was submitted here. The first one was gone over, given to the committee and they suggested certain changes in it emphasizing the fact that Russell Young was not promoted.

Taking into consideration the changes that they suggested I drew up the document and we had a meeting with the Retailers Council.

Q Excuse me, sir. Would you please look at General Counsel's [133] 7?

A Yes.

Q Is that a copy of the document that you were referring to?

A That is the revised document, the corrections were suggested by the people involved.

Q Fine.

A We had a meeting of the Retailers Council to discuss it and at that meeting it was determined that we would have a meeting at the Emporium. We met at The Emporium with the committee, Mr. Ehrenfried, Mr. Brown for the Council, Miss Anibale for the Emporium.

Q Give us the date.

A It was sometime after April 11, after the report was submitted to the Retailers Council, I would say within two weeks. After that meeting it was brought out and the committee was quite outspoken as to what their feelings were on it. Mr. Young specifically referred to the fact that he had not been promoted.

TRIAL EXAMINER: Mr. Young belonged to a minority race, did he?

THE WITNESS: Yes, he is a Negro, and other people brought out the grievances. It was agreed at that time that the store would look into it and then see what they could do to alleviate the circumstances.

In May we received a call from one of the members in the [134] store and they said they wanted a meeting, about 10 people, down at Gianinis, close to The Emporium and I went down there alone to meet with them. At this point we were concerned with Russell Young and we brough some of these things up to the employer and Mr. Williams had been in contact with some of the individuals involved and he had asked that we have a meeting with the group.

They specified—I talked to Mr. Young and Mr. Washington myself and I said I wanted a meeting with them and they said that Russell was going on vacation and they wanted it to be held when he came back. There was some delay in there and finally in September we had a meeting and at the union hall where we had the Court Reporter and Mr. Scott and I think he is with some government agency and Mr. Smith, I believe it was, from the FEPC.

At this meeting there were quite a few things discussed and we specifically informed the individuals that we

were going to go into an Adjustment Board, that we wanted to process these grievances and we felt that there were problems of discrimination and it was my own personal feeling that all the discriminatory acts should be processed and that we ought to follow through and take care of it.

At this meeting I specifically requested and pointed out that it is going to take a long time in some of these cases, but that they would not only be helping themselves, but other [135] people involved in it, because we had very strong feelings on the question.

It was agreed at that time and they were advised by both Mr. Scott and Mr. Smith to take it to the union and that the union should follow through and take whatever steps are necessary up to and including arbitration to adjudicate the grievances.

The Adjustment Board was finally scheduled for October 16, I believe it was and at this time unfortunately I was out of town, in Omaha, Nebraska at a National Church conference and since this had been well in advance, there was no way for me to not attend it and Mr. Griffin and Mr. Williams and Mrs. Reed represented the union at the Adjustment Board.

At this time the case was presented and they had a meeting and wanted to have the testimony and I previosuly had talked to our attorney to prepare a position for the union which was drawn up and have ready for the Adjustment Board.

We also discussed with Mr. Brown this subject after the first meeting had been held because it was my feeling certain acts had to take place in order that everybody at The Emporium would have an opportunity not only to have a job, but to advance into new positions.

Unfortunately because of lack of testimony I called from Omaha to see how things were going along and was informed that while four did testify, four would not testify unless they [136] could testify as a group rather than as individual witnesses. This is the way it was explained to me anyhow.

I wasn't very happy because we had involved everybody including our attorney and we had prepared to go on into arbitration.

Several times I informed all of the people that in my opinion the only solution to the problem was to follow the agreement in order that we could then have some lasting effect on any situation of discrimination.

I feel very badly that we were not able to process it after the testimony was not presented by the affected individuals, and this is very vital testimony, our attorney advised that it would be very difficult to proceed to arbitration because we would not have a whole case to present.

Subsequently, we had a situation where the gentlemen plural were terminated for supposedly boycotting The Emporium and there are time limits in the contract. In order that the time limits would be protected I sent a letter to the Retailers Council protesting the discharge and said that we wanted to take care of our responsibilities as to all the individuals.

I did not feel that it was our rsponsibility to go out and seek out the people who had rights under the contract even though Mr. Hollins never became a union member, we represented him the same as everyone else. [137] I believe that summarizes the position at least for an opening.

Q At any time after the second scheduled Adjustment Board meeting, did you have any conversation with Mr. Hollins or Mr. Hawkins when they were putting these leaflets?

A I talked to Mr. Hollins one Saturday.

Q Would you tell us please when that was and where it was and what took place?

A It was sort of a one way conversation. I informed Mr. Hollins that I thought the only way to resolve the matter was through an arbitration. I didn't want to see them get fired. He informed me that the only one they wanted to talk to was Mr. Batchelder and I informed him that we had concluded negotiations in 1967 and I was a spokesman for the union and represented a few thousand clerks and I have never met Mr. Batchelder and these are responsibilities that are assigned to other

individuals. That was the extent of the conversation. That is the only time I spoke to anybody since then.

Q Was anybody with you at the time?

A Well, Mr. Griffin, I don't think he was in the immediate—he was near me though.

Q He didn't overhear you?

A He might have talked to Mr. Hollins on his own though.

MR. BAHRS: That's all I have.

CROSS-EXAMINATION

[138] Q (By Mr. Kintz) Mr. Johnson, as I understand it the secretary-treasurer is the chief executive officer of your organization, is that right?

A Yes.

Q So you are the highest authority in the local, is that right?

A I am the one that gets the blame, yes.

Q The buck stops with you, is that the phrase?

A Quite a few things.

Q In the course of your testimony I heard you use the phrase that you felt that there were problems of discrimination, is that a correct statement of your feelings?

A Yes.

Q Did it have reference to The Emporium?

A Oh, yes.

Q What was the basis of this? Why did you feel this way?

A I came to the conclusion after the meeting we had in April that there was a serious situation that developed and it had to be taken care of.

Q How many employees of The Emporium did you discuss the matter with, Mr. Johnson?

A Well, at the meeting I would say—we have a list of meeting attendants cards, but I would say about 40 or so that night.

Q Was it from these discussions that you reached the [139] conclusion that there was a problem in discrimination?

A That was the first time.

Q Did you undertake any other investigation about the problem of discrimination at The Emporium?

A I talked to the gentlemen and other minority people.

Q Approximately how many others on other occasions did you speak with?

A Off and on I spoke to Russell Young and then we had the meeting of the 10th. In Gianini's I asked another lady I happened to know there whether she thought there was discrimination in some type, subtle or otherwise and she said, "Yes".

Q So from talking to people one occasion or another, you formed this impression as a personal impression of yours? It also eventually became the official position of your union, is that right, sir?

A Definitely.

Q As a matter of fact it was not only the official position of the union that there was racial discrimination at The Emporium, but that was the official position that you communicated to Mr. Hollins and Mr. Hawkins, is that right?

A Oh, sure.

Q You communicated with lots of minority people there?

A I communicated with anybody that would listen to it.

Q Isn't it a fact that you, Mr. Johnson, as the collective [140] bargaining representative of the employees, felt that you had certain obligations to do something about it?

A I felt all of the members of the union had an obligation.

Q And you as a chief executive officer had a particular obligation?

A Oh, yes, the most important responsibility rested with me, but I should also point out that the thing is that I explained it to the members involved in this instance not once but many times that we could only carry forth and do our job if we had their cooperation. We were the doctor and we had to have their cooperation.

Q I show you now General Counsel's Exhibit 7. That document was prepared by you, was it, sir?

A After it was prepared and then submitted to the individuals involved and after corrections were suggested I finalized it and presented it to the Retailers Council.

Q It bears your signature on the original. I will show you General Counsel's Exhibit 7. Is that your signature, sir?

A Oh, yes.

Q So the contents of this report at this point then became the official position of your union with you as spokesman, is that right?

A Oh, yes.

Q Now, —

A I don't think there was ever any doubt about that.

[141] Q Right. Did you cause that document or did you know whether that document was caused to be posted on the bulletin board of The Emporium by any officials of the union?

A I didn't direct them to. We gave copies out to several members and I presented it to the Retailers Council and to Mr. Ehrenfried, but I did not direct it to be posted, no. We had enough copies around and I imagine again like some other things, people would post things on the boards.

Q Isn't it also correct, Mr. Johnson, in your position as chief representative of the collective bargaining agreement, as the collective bargaining agent of the union, that you specifically charged The Emporium with discriminating against minority persons?

A Yes, I requested the Adjustment Board.

MR. KINTZ: May we have a minute off the record?

TRIAL EXAMINER: Yes, off the record.

(Discussion off the record)

TRIAL EXAMINER: Back on the record.

MR. KINTZ: Your Honor, I have marked for identification as General Counsel's Exhibit 11, a document purporting to be a letter from—or to Mr. Vincent Brown of the San Francisco Retailers Council from Walter L. Johnson.

(The document above referred to was marked General Counsel's Exhibit 11 for identification.)

Q (By Mr. Kintz) I do not have the original of that [142] document and I show you what purports to be a copy and ask you if you ever recall seeing it before, Mr. Johnson?

A That's right, it is ours.

Q Did you cause the original of this letter to be sent to Mr. Vincent Brown?

A Yes.

Q Will you tell us who Mr. Vincent Brown is please?

A Well, Mr. Brown was a former general manager of the San Francisco Retailers Council. He is no longer employed there anymore and the San Francisco Retailers Council consists of the group of stores involved in the contract that Mr. Bahrs referred to.

Q That is a multi-employer group that bargains with your union to get to the heart of the matter, is it not?

A Yes. Any Adjustment Board letters or anything setting up Adjustment Boards was handled through the Retailers Council and Mr. Brown.

Q And the letter which I have just shown you bearing a date September 4, 1968, was it sent on or about that date, sir?

A Yes.

Q Am I correct that this letter, since I am not so sure that it speaks for itself, Your Honor, had reference to the questions of racial discrimination at The Emporium?

A Yes. It was sent immedaitely after our meeting in September the next day.

[143] Q And that is what it has reference to?

A Right, we did not have the transcript at that time so we guessed at the number of pages.

Q And I now have your copy of the transcript as a matter of fact, is that right, Mr. Johnson?

A We never got it back from somebody. We would like to have it back.

Q I promised you when you left today you could have it back.

MR. KINTZ: I offer General Counsel's 11 into evidence. I request leave to make copies.

MR. BAHRS: No objection.

TRIAL EXAMINER: Received.

(The document above referred to, heretofore marked General Counsel's Exhibit 11, was received in evidence.)

TRIAL EXAMINER: It may be withdrawn for purposes of making copies.

MR. KINTZ: Yes, thank you.

Q (By Mr. Kintz) Now, at any time during the course of what you outlined in your testimony as to the discussions about this problem that you had with the employees concerned and with the management representatives, at any time did you warn or instruct the employees not to engage in any activity on their own?

A No, I think at the September meeting there were some frustrations exhibited about the situation.

[144] Q I see.

A And it was suggested that we picket The Emporium.

Q It was suggested that who picket The Emporium?

A The union and the union members and we informed them that we had a contract, we couldn't participate in any boycotting activities, that individuals could take whatever action they wanted to as long as it was legal.

Q When you say that these things were pointed out did you specifically tell the employees who were present that they could take whatever action they wanted to?

A Yes. I said that an individual has the right to take action, but a union could not.

Q You explained to them, I assume, that the reason the union could not was that it had a contract and it would be breaching the contract if it picketed, is that right?

A The subject came up because of the fact, as I pointed out, that there were frustrations, even though at the beginning I pointed out to all of the people and I wasn't going to make any rash promises, that this was taking time, even if it went to arbitration it could take seven months to get a decision. At particular times throughout the summer they wanted something dramatic. I informed them what an individual wanted to do on

their own, they could do, but I wasn't going to engage in any drama, but I wanted some orderly legal procedures that would have some long lasting effect.

[145] Q As a matter of fact the people you were talking to included Mr. Hawkins and Mr. Hollins, isn't that right?

A Yes.

Q They were present?

A Yes.

Q As a matter of fact this was an exchange between you and Mr. Hollins?

A Well, there were a group of people present. They were present and I probably was addressing myself to Mr. Hawkins at the particular time.

Q One more thing about that meeting. You mentioned some testimony—I should say you mentioned in your testimony that some statements were made by Mr. Smith. Mr. Smith is an official of the Fair Employment Practices Commission, is that right?

A Yes.

Q Do you recall Mr. Smith in the course of that meeting in the presence of Mr. Hawkins and Mr. Hollins stating that he joined with Mr. Scott in saying that these young fellows really have legitimate beefs or words to that effect?

A Oh, yes. He said that it was beyond the picketing stage, I believe, Mr. Scott said that, but Mr. Smith said that he complimented the young people in coming before that Board that evening and in doing so he felt that they ought to following the union's advice and stick with the union and let the union [146] handle it, and I believe he pointed out that the arbitration had to take place before any court procedures, or proceedings.

Q Did he also invite them to make use of the facilities of the Fair Employment Practices Commission?

A Yes, he said, "I am not soliciting anything, however, I want to point out that we are available if anybody needs us."

Q I am not sure the record is clear in this regard, but who is Mr. Scott and what is his position?

A Mr. Scott was a former organizer of the Seafarers Union and I am trying to think of the organization that—

Q Is it the Equal Employment Opportunities Commission?

A That's right, the 6th Street office.

Q Economic Opportunity Commission?

A Yes, that's right. There are so many I can't keep up with them these days.

MR. KINTZ: I have no further questions, Mr. Johnson.

MR. HECHT: No questions.

REDIRECT EXAMINATION

Q (By Mr. Bahrs) I would like to get clear about this conversation that took place at this September meeting. The representative of the Fair Employment Practices Commission stated that he thought the employees ought to follow the union's advice and use the union's procedure, is that right?

A I believe that was it.

Q And by that did you understand that to mean the Adjustment [147] Board procedure and arbitration?

A No, I think he referred more to arbitration than he did Adjustment Board.

Q All right, arbitration.

A Yes.

Q Do I understand that you at any time advised the employees that they should picket The Emporium?

A No, I didn't.

Q Did you advise the employees that they should follow the union procedure set forth in the contract?

A I said that if they wanted some longlasting effect that they should follow the union's procedure and I wasn't going to engage in any drama, however, if they wanted to take any other action they could do it as individuals and do whatever they wanted as individuals.

Q Then the union would have no responsibility for that?

A No responsibility as long as it isn't concerned with the contract. We will advise them as to what we thought

was the best procedure, but it was obvious that our advice didn't carry much weight at the time.

Q Well, your advice was that they follow the Adjustment Board and arbitration procedures, is that correct?

A All the way through, yes.

MR. BAHRS: That's all.

MR. HECHT: Nothing further.

[148] MR. KINTZ: Nothing further.

TRIAL EXAMINER: You are excused.

(Witness excused)

MR. BAHRS: I call Mr. Griffin.

TRIAL EXAMINER: Come forward and raise your right hand and be sworn.

Whereupon,

W. GRIFFIN

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bahrs) Tell us please your position.

A Business Agent and assistant to the President of the Department Store Employees Union of San Francisco.

Q Were you such at all times in 1968?

A I was Business Agent.

Q Now, did you attend any of these meetings that had been described here between the employees of The Emporium, members of minority groups that had conferred with officials of the union?

A Yes.

Q Tell us please the first of those, when and where?

A The first meeting was not at Giannini's, but at the Manning restaurant with Mr. Williams on Market Street. I [149] was asked to go down with him because we wanted to meet with these young men who had problems in that department, we wanted to get to the facts.

Q As best you can, tell us when was this?

A It had to be in April or May. I don't remember the exact date.

Q Who was there?

A Mr. Hawkins was there, Mr. Hollins was there, Mr. Epps was there, Mr. Washington, it was about eight or nine in all.

Q And will you tell us, please, what was said?

A Well, the men, which we agreed after hearing their story, that there was something that merited further investigation by the union, that we felt that there were problems in this department, as Mr. Johnson stated earlier after our contract in 1967, it was the first time that we ever had a chance to get in the nonselling areas in all the retail downtown department stores, and not being knowledgeable of the situation in these departments, we felt that we should really dig right into it and get the facts after these young men so eloquently relayed their stories to us about the fact that they weren't being able to get upgraded in their positions and they would be trainees for six months and not get up-graded and, the guy, for example, who was a supervisor, he would still be pushing a broom, and this set up a series of meetings. I did not attend the meeting with Mr. Johnson.

[150] Q Did you inform the employees at this first meeting that the union would investigate this further?

A And take whatever action is necessary.

Q Did you attend this meeting in September?

A Yes, I attended that meeting.

Q That was testified to by Mr. Johnson?

A Yes.

Q And generally could you tell us how many employees spoke with reference to what they considered were acts of discrimination by The Emporium?

A Oh, just judging from recollection now, there wasn't a single one there that couldn't relate to some sort of discrimination. We had our shop steward Miss Vera Duhon, who works in the basement. We also had Miss Lubguban, L-u-b-g-u-b-a-n, and the two men present and others. They all testified to some sort of discrimination going on in The Emporium.

Q Now, was there some statement made by—or on behalf of the union either by Mr. Johnson or yourself as to what action the union would take?

A Mr. Johnson conducted the meeting that night and he properly stated it for the record.

Q You heard his testimony?

A Yes.

TRIAL EXAMINER: You heard his testimony and you adopt it as yours?

[151] THE WITNESS: Yes, I adopt it.

Q (By Mr. Bahrs) As correct?

A Yes.

Q Did you hear Mr. Johnson tell the employees that they should take any individual action of picketing?

A He did not tell them to picket. He said it was up to them as individuals to take whatever actions they wished, but he hoped that it would follow the program as laid down by the union in adjudicating these grievances.

Q Through the arbitration?

A Yes, and the Adjustment Board.

Q Following that meeting, did you have occasion to see Messrs. Hawkins and Hollins picketing in front of The Emporium?

A Yes.

Q Would you tell us please when that was?

A I would not be truthful if I could not give the exact date. Was it on November on a Saturday?

TRIAL EXAMINER: The dates are not in dispute.

Q (By Mr. Bahrs) November 2, is that right?

A Yes.

Q November 2 and November 9?

A I couldn't testify as to the exact dates.

Q Did you have a conversation with either Mr. Hawkins and Mr. Hollins?

[152] A I think I talked to Mr. Hawkins later.

Q Tell us, please, what the conversation was.

A Gee, I don't recollect. It was along the lines of letting the union handle it. I thought they were going the wrong way about it, if I remember correctly.

MR. BAHRS: I think that is all.

TRIAL EXAMINER: Cross-Examination?

MR. KINTZ: Yes.

CROSS-EXAMINATION

Q (By Mr. Kintz) Mr. Griffin, you stated that you had heard testimony of Mr. Johnson and that you were adopting it here. Do I assume correctly—with respect to that meeting at least—

A Yes.

Q Do I assume correctly that you were also adopting Mr. Johnson's testimony with respect to the questions that I asked him?

A Yes.

Q Now, as I understand it, the incident on November —that is in which you observed the employees picketing, all you can recall is making some statements to them to the effect that you thought they ought to let the union handle it, is that correct, nothing more than that?

A Yes, nothing more than that. I have had very cordial relations with them.

[153] Q I see. Have you at any time expressed—strike that.

I understand that you participated in a group of meetings with employees of The Emporium concerning the issue of racial discrimination, is that right?

A Well, the meetings so stated. I just happen to be sitting in the meetings.

Q Offhand would you estimate how many employees of The Emporium you discussed the issue of racial discrimination with?

A I couldn't offhand tell you. It would be an educated guess.

Q In any event, I understood you talked to some?

A Yes.

Q Did you form any opinion or conclusion in your mind as to the merit of this claim?

A I think their claim valid.

Q Did you at any time express that opinion to Mr. Hawkins and Mr. Hollins or both?

A I don't remember whether I did or not. I don't say that I did, I don't remember.

Q You don't remember whether or not you did?

A Yes.

MR. KINTZ: No further questions.

MR. HECHT: No further questions.

TRIAL EXAMINER: You are excused, sir.

(Witness excused)

[154] MR. BAHRS: May we have just a moment?

TRIAL EXAMINER: Certainly. Let's have a five minute recess.

(Short recess)

TRIAL EXAMINER: Back on the record. You may proceed, Mr. Bahrs.

MR. BAHRS: I will call Mr. Carver.

TRIAL EXAMINER: Come forward, sir, and raise your right hand and be sworn.

Whereupon,

HOWARD CARVER

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Have a seat.

DIRECT EXAMINATION

Q (By Mr. Bahrs) Will you please state your—what is your position and occupation, Mr. Carver?

A I am assistant president of The Emporium-Capwell Company.

Q For how long have you held that position?

A Eleven years.

TRIAL EXAMINER: I don't believe you got his name. State your full name for the record.

THE WITNESS: Howard Carver.

Q (By Mr. Bahrs) Your address?

[155] A 55 Poincetta, P-o-i-n-c-e-t-t-a, Daly City.

Q Mr. Carver, there has been received in evidence as Joint Exhibit 1(a) and 1(b) a report, an employers information report, Equal Employment Opportunities report, so to speak. Did you have anything to do with the preparation of this report?

A I supervised the compilation in all units, yes.

Q So to enable the Trial Examiner to understand the significance of some of these figures in here, would you please point out the number of Negroes or other minorities that have been promoted to the highest positions or high positions in The Emporium?

A This report of the EEOC—

TRIAL EXAMINER: Could we get a date on the report?

THE WITNESS: April 24, 1968.

Q (By Mr. Bahrs) Right.

A This reports breaks down into all employees, a total, and then male and female, comprising that total, and then as a subtotal, minority group employees, singling out Negro, Oriental, American Indian, Spanish surnamed Americans and again broken between male and female, and then those categories are again broken by officials and managers, professionals, technicians, sales workers, office and clerical, skilled craftsmen and semi-skilled operatives and then laborers, unskilled.

Then the part B describes the titles that fit into each [156] of these job categories.

For example, under craftsmen are cabinetmakers, carpenters, engineers, etc.

The Emporium-Capwell Company is on a promotion from within basis, has been for the 35 years that I have been with the company. All officials and all managers have been promoted from within the ranks of the employees.

The first category that is reported is officials and managers, and of the total, 1145 there have been 10 male Negroes, 9 Oriental males, and 18 Spanish surnamed Americans promoted to the management level.

In the female category there have been 10 Negroes, 11 Orientals and 9 surnamed Spanish Americans.

TRIAL EXAMINER: Isn't this applicable to only The Emporium store here on Market Street here in San Francisco?

THE WITNESS: No, sir.

TRIAL EXAMINER: This is the entire organization?

THE WITNESS: Yes.

TRIAL EXAMINER: All right.

THE WITNESS: And the balance of the report then again breaks out the various job categories by male and female and then by minority group employees to a subsequent total.

Q (By Mr. Bahrs) All right. Now, you mentioned about the Emporium policy of promotion from within. Is it a normal procedure to start employees in the lowest ranks so to speak?

[157] A Normally, yes, sir, and an exception might be a skilled craftsman and in that instance he would be an apprentice probably as a beginner.

Q And are there conspicuous examples as you remember that you could tell us of people who started as stock clerks as Mr. Hollins and Mr. Hawkins are?

A Yes, I think the President and I are examples.

Q Both of you started as stock clerks?

A Yes, doing the same work as Mr. Hawkins and Mr. Hollins did. You asked for an example there.

Q Yes, please.

A The present traffic manager of the company, Mr. Emmett Powell is black, had the same job that has been referred to as stock clerk here. At high school level at the time he began work, with our assistance and encouragement he completed four years of college and now has a traffic manager degree.

During that time he was promoted, it is my recollection in the neighborhood of a half a dozen times until he reached his present consideration. He is under consideration for further promotion.

Q Is there another person who succeeded to Mr. Ehrenfried's position when Mr. Ehrenfried was transferred to the San Francisco store?

A Mr. Ehrenfried was manager of our unit in Palo Alto known as the Emporium Stanford and at the time

he was relieved [158] of those duties Mr. Andrew Howard, who is black, who has been with our company and promoted up through the ranks assumed the management of that organization where he presently directs approximately five hundred employees.

Q Now, could you describe briefly the procedures by which the employees are reveiwed and evaluated for promotion?

A Well, I think this morning's testimony brought out each six months or so on change of job every employee is entitled to an evaluation by his supervisor.

In turn that supervisor's evaluation is viewed by his supervisor. In other words, there are two levels of review. After the completion of that summary in writing then that review is discussed with the individual employee, so that he may know what his status is, whether he is achieving the goals set for him and what lies ahead for him. Not only on immediate job performance, but for merit increase or for consideration against future openings and promotion. That is at all levels for all employees.

Now, it would be done more frequently than six months if an individual had moved into a new category.

Now, there are exceptions. The only exception that occurs to me at the moment would be someone that we refer to as a temporary employee, a person on a seasonal job where we would not expect to retain the person.

However, at the conclusion of that temporary employment, [159] there would be a supervisor's evaluation of the performance of that individual.

Q Can you say whether any distinction is made in these evaluations because of the race or color of the employee?

A Well—

MR. KINTZ: Your Honor, I have not objected to the questions along these lines. I don't wish to interrupt Counsel's examination, however, I wish to make it clear that the General Counsel's case is based on the theory that these gentlemen had reasonable cause to believe or some affirmative basis to believe that racial discrimination exists. We are not seeking to try the employer for seeking to discriminate against employees because of race.

I don't think it is our business as I understand the issues at law. I do not wish the hearing to get broadened to that extent and that is why I have endeavored to offer evidence showing the state of mind of these employees rather than concentrate on litigating the subject of race discrimination of The Emporium. I hope that statement on my part may help to narrow the issues before you.

TRIAL EXAMINER: This goes to reasonable cause to believe, and this goes to whether or not they had reasonable cause to believe. Proceed.

Q (By Mr. Bahrs) Is there any distinction or difference in the evaluation of the employees based upon their race or color or creed?

[160] A Well, certainly not in the policy and the effort to carry it out. If it were to occur, then there would every effort to correct it or root it out. The answer is a categorical no.

Q As a matter of fact The Emporium has pioneered in the employment of black employees, isn't that correct?

MR. KINTZ: Objected to as calling for a conclusion and self serving declaration.

MR. BAHRS: I withdraw it.

Q (By Mr. Bahrs) Isn't it a fact that The Emporium put black sales persons on the floor before any major department store in San Francisco did so?

A Yes, sir.

Q Could you tell us please what the procedure is if The Emporium were to receive a complaint that there is a discrimination against an employee based upon race, color or creed?

A It would be referred immediately to the personnel office to collect the facts, and if they were sustained, the general manager would take immediate action to correct it.

MR. BAHRS: I think that is all.

MR. KINTZ: I have no questions, Your Honor.

MR. HECHT: No questions.

MR. BAHRS: That's all.

TRIAL EXAMINER: You are excused, sir.

(Witness excused)

FORM NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.22

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 20-CA-5304

Date Filed 11-19-68

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: THE EMPORIUM

b. Number of Workers Employed: Unknown

c. Address of Establishment (Street and number, city, State, and ZIP code): 835 Market Street, San Francisco, California

d. Employer Representative to Contact: Personnel Manager

e. Phone No.: 982-1111

f. Type of Establishment (Factory, mine, wholesaler, etc.): Department Store

g. Identify Principal Product or Service: Retail Sales

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and ---------- (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about November 11, 1968, the Employer unlawfully discharged its employees Tom Hawkins and Jim Hollins, solely because of their concerted protected activity in informing the public, by peaceful, leafletting, in public places, on said employer's non-work time, of their complaint of the Employer's racial discrimination in hiring, firing, promotion and other personnel activities and attitudes.

By these and other acts the Employer has interfered with, restrained or coerced its employees in the exercise of the rights guaranteed to them in §7 of the Act.

NATIONAL LABOR RELATIONS BOARD
Docket No. 20-CA-5304 OFFICIAL EXHIBIT NO. GC 1a
Disposition: Identified a; Received ✓; Rejected
In the matter of The Emporium
Date 12-19-68 Witness Reporter
No. Pages

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Western Addition Community Organization

4a. Address (Street and number, city, State, and ZIP code): 1500 Post Street, San Francisco, California

4b. Telephone No.: 922-5757

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

None

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Jotham D. Pierce, Jr. (Signature of representative or person filing charge) Representative (Title, if any)

Address 721 Webster Street, San Francisco, Calif. 94117 567-2804 (Telephone number) November 15, 1968 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 924-934

1(a)

98

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 20-CA-5304

THE EMPORIUM

and

WESTERN ADDITION COMMUNITY ORGANIZATION

COMPLAINT AND NOTICE OF HEARING

It having been charged by Western Addition Community Organization that The Emporium, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Twentieth Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

I

The charge was filed on November 19, 1968, and a copy thereof was served on Respondent on the same date.

II

(a) The Respondent is a California corporation engaged in the operation of retail stores in the State of California.

(b) During the past year Respondent in the course and conduct of its business operations made gross sales in excess of $500,000.

(c) During the past year Respondent in the course and conduct of its business operations purchased and received goods and materials valued in excess of $50,000 directly from outside the State of California.

III

Respondent is, and has been at all times material herein, an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

IV

At all times material herein Paul Ehrenfried has been Manager of Labor Relations for the Respondent and an agent of Respondent acting on its behalf within the meaning of Section 2(13) of the Act and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act.

V

On or about November 11, 1968, Respondent terminated the following employees because of their protected concerted activities:

(a) Jim Joseph Hollins
(b) Tom Hawkins

VI

The acts of Respondent described above in paragraph V, and each of said acts, occurring in connection with the Respondent's operations described above in paragraphs II and III, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 8th day of April, 1969, at ten o'clock in the forenoon, Pacific Standard Time, in U. S. Tax Court, Room 18201, Federal Building and U. S. Court House, 450 Golden Gate Avenue, San Francisco, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right

to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

DATED AT San Francisco, California, this 4th day of March, 1969.

[SEAL]

/s/ Roy O. Hoffman,
ROY O. HOFFMAN
Regional Director
National Labor Relations Board
Region 20
450 Golden Gate Avenue
Box 36047
San Francisco, California 94102

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 20-CA-5304

THE EMPORIUM

and

WESTERN ADDITION COMMUNITY ORGANIZATION

ANSWER OF THE EMPORIUM

Respondent, The Emporium, answers the Complaint herein as follows:

I

Admits the allegations in Paragraphs I, II, III, and IV of the Complaint.

II

Answering Paragraph V and VI

Denies that Jim Hollins was an employee within the meaning of the Act but on the contrary alleges that Jim Hollins was at all times a supervisor.

Denies all the other allegations of Paragraphs V and VI of the Complaint.

THE EMPORIUM

BY: /s/ George O. Bahrs
Attorney for the Emporium

CERTIFICATE OF SERVICE

George O. Bahrs hereby certifies that he is the attorney for the Respondent and as such he mailed on March 11, 1969, a true copy of the within Answer by depositing a true copy thereof in a United States mailbox in the City and County of San Francisco, California, said copy being contained in a sealed envelope with postage prepaid and addressed to:

Jotham D. Pierce, Jr.
721 Webster Street
San Francisco, California 94117

Western Addition Community Organization
1500 Post Street
San Francisco, California 94109

and that there is a regular mail service between the place of mailing and the place so addressed.

/s/ George O. Bahrs
GEORGE O. BAHRS

GC-2

AGREEMENT

between

SAN FRANCISCO RETAILERS' COUNCIL

and

DEPARTMENT STORE
EMPLOYES' UNION
LOCAL NO. 1100, R.C.I.A.

As an employe you are requested to cooperate with the Union and your employer jointly to carry out the terms and spirit of this agreement.

COMPANY

DECEMBER 29, 1967

• • • •

Section 1. RECOGNITION

A. The Union is recognized as the sole collective bargaining agency for all San Francisco employes employed at the San Francisco stores of the employers, except for executives as defined in Section 2 (Definition of Executives), and for the classifications listed in Appendix "B."

B. The Council is recognized as the sole collective bargaining agency for the employers.

C. "Council" means San Francisco Retailers Council.

D. "Union" means Department Store Employees Union, Local 1100, R.C.I.A.

E. "Employers" or "stores" means members of the Council and parties to the agreement.

F. Where "employer" is used in the singular it shall be deemed to refer to a single employer, member of the Council, and the context of the sentence in which it is used shall be deemed to refer to such employer's own employes

employed at a San Francisco store, or to a single employe of such employer.

• • • •

Section 3. UNION MEMBERSHIP

A. There shall be no discrimination by an employer against any employe or applicant on account of membership in or activity on behalf of the Union.

B. Those employes who are members of the Union, or who become members, must continue their membership in good standing for the life of the present agreement as a condition of employment. Those employes who complete their probationary period on January 31, 1968 and all employes hired on and after February 1, 1968, shall within 31 days following their employment, as a condition of continued employment, acquire membership in good standing in the Union.

C. "Good standing" for the purpose of this agreement shall mean that the employe shall tender in accordance with applicable law the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

D. The employer agrees to notify the Union of all newly hired employes within 15 days of their employment.

E. The provisions of subsection B shall not apply to Christmas Extras whose work begins on and after November 15 and is completed by January 1 of the following year.

• • • •

Section 5. UNION-EMPLOYER RELATIONS

A. In the interest of promoting a harmonious relationship mutually beneficial to the Employers and the Union, the Employers agree to present all new employes, except Christmas extras, with a copy of this agreement, and such employes will be asked to cooperate with the Union and the Employers jointly to carry out the terms of the agreement.

B. Any act of any employer, representative of the Union, or any employe that is interfering with the faithful performance of this agreement, or a harmonious rela-

tionship between the employers and the Union, may be referred to the Adjustment Board for such action as the Adjustment Board deems proper, and is permissive within this agreement.

C. The mutually agreeable system that has been worked out between the employers and the Union to permit the Union activities of receiving complaints and collecting dues during store hours shall be continued. It is understood, however, that such activities shall be conducted at reasonable times and so as not to interfere with the conduct of the employer's business or to interrupt or interfere unreasonably with the performance of work.

• • • •

Section 19. DISCHARGE OF EMPLOYES

A. The employer shall have the right to discharge any employe for just cause. Any employe feeling he has been unjustly discharged shall have the right to appeal such discharge through the Union within 7 calendar days of the date of discharge pursuant to Section 36 (Processing of Complaints and Disputes).

• • • •

Section 21. GENERAL WORKING CONDITIONS

• • • •

E. No person shall be discriminated against in regard to hire, tenure of employment, job status by reason of race, color, creed, national origin, age or sex.

• • • •

Section 36. PROCESSING OF COMPLAINTS & DISPUTES

A. There shall be no strike or lockout during the life of this agreement.

B. An Adjustment Board consisting of 3 representatives of the Council and 3 representatives of the Union shall consider all complaints and disputes arising from the terms of this agreement, all questions and interpretations of the agreement, and discharge cases. All discharge cases must be appealed to the Board within 7 days from

the date of discharge, otherwise the right to appeal is lost. The Adjustment Board shall have no authority to negotiate a new agreement. The Adjustment Board is expressly empowered to determine with respect to any complaint that may arise, whether or not certain types of operation now classified require an actual practice and performance of work beyond the ordinary and usual work described and referred to by said designation, or the performance of work of a special kind of skill and responsibility and, if so, to create and establish proper classification and scale for the same and, in so doing to invoke all of this section.

C. Any matter referred to the Adjustment Board shall be taken up by the Board within 7 days after written notice by either party. If the Board is unable to reach a settlement within 7 days thereafter, either party may request arbitration of the issue, or issues, within 14 days following the date the Adjustment Board reached an impasse and was unable to resolve the dispute by giving written notice of such request to the other party. Upon such request the matter shall be submitted for disposition to an impartial arbitrator mutually agreeable to both parties. If neither party gives such notice to the other party within 14 days following an impasse of the Adjustment Board on the disputed issue, or issues, the right to submit the complaint, controversy or dispute, or disputes, to arbitration shall be considered waived.

D. The impartial arbitrator shall be selected by agreement of the parties. In the event the parties are unable to agree upon an arbitrator, he shall be selected by lot from among the following: Messrs. Robert E. Burns, Sam Kagel, Hubert Wyckoff, Joseph Gabarino and Howard Durham. No arbitrator shall be chosen to serve in two consecutive arbitrations unless by mutual consent of the parties.

E An arbitrator shall have no power to add to, subtract from, change, or modify any provision of this agreement, but shall be authorized only to interpret the existing provisions of this agreement and apply them to the specific facts of the complaint or dispute.

F. Any decision made by a majority of the Adjustment Board, or as a result of arbitration, shall be accepted as final and binding. Any expenses incurred as the result of arbitration shall be borne one-half by the Union and one-half by the employer.

* * * *

Section 38. TERM

A. This agreement shall be effective from June 1, 1967, and shall remain in effect to and including May 31, 1972, providing that either party by 60 days prior written notice to the other may reopen this agreement on June 1, 1970. Such reopening shall be limited to the following issues and no others:

(1) Wages, straight-time hourly rates of pay.
(2) Vision care benefits.
(3) Pension benefits.

* * * *

C. The parties hereto agree that all issues between them are settled by this agreement for the full term thereof excepting those reopenable issues hereinabove specified.

For the Union:

/s/ Walter L. Johnson, Sec-Treas.

For the Council:

/s/ Vincent H. Brown

* * * *

APPENDIX "B"

Artists
Barbers
Beauticians
Busheling Operations
Cabinet Makers
Carpenters
Copywriters
Culinary Employes
Deliverymen—Outside
Displaymen
Drapery Workers
Electric Data Processing Programers-Operators
Electricians
Elevator Constructors
Elevator Operators
Engineers
Executive Trainees
Floor Covering Layers
Fur Workers
Furniture Finishers
Garage Employes
Guards
Janitorial Operations (Janitors, Matrons, Maids, Handymen)
Laborers
Painters
Patrick employes except salespeople in retail store
Personnel Interviewers
Personnel Office Clerks
Pharmacists
Plumbers
Printers
Radio & TV Servicemen
Registered Nurses
Secretaries to executives above level of department manager
Shoe Repairmen
Shoe Salespeople
Special Officers
Store Detectives
Teamsters
Teen Board Members
Warehouse Department Operations (Shipping and/or Receiving Clerks; General Department Store Warehousemen)
Watchmen
Window Washers

* * * *

BEWARE EMPORIUM SHOPPERS
BOYCOTT IS ON ! ! !

For years at the Emporium black, brown, yellow and red people, have worked at the lowest jobs, at the lowest levels. Time and time again we have seen intelligent hard working brothers and sisters denied promotions and basic respect.

The Emporium is a 20th Century colonial plantation. The brothers and sisters are being treated the same way as our brothers are being treated in the slave mines of South Africa.

Whenever the racist pig at The Emporium injures or harms a black sister or brother, they injure and insult all black people. The Emporium must pay for these insults. Therefore, we encourage all of our people to take their money out of this racist store, until black people have full employment and are promoted justly throughout The Emporium.

We welcome the support of our brothers and sisters from the churches, unions, sororities, fraternities, social clubs, Afro-American Institute, Black Panther Party, W.A.C.O. and the Poor People's Institute.

Tom Hawkins
Dept. 80-302
725

On November 2, 1968, you distributed copies of the attached statement to Negro customers and prospective customers, and to other persons passing by in front of The Emporium.

These statements are untrue and are intended to and will, if continued injure the reputation of The Emporium.

There are ample legal remedies to correct any discrimination you may claim to exist. Therefore, we view your activities as a deliberate and unjustified attempt to injure your employer.

This is to inform you that you may be discharged if you repeat any of the above acts or make any similar public statement.

/s/ [Illegible]
The Emporium

[Refused to sign]
/s/ H. R. Henderson
Employee

Date: 11-7-68

cc: Employee's File
Employee
Local 1100

Attachment (1)

Copy given to Mr. Hawkins.

/s/ [Illegible]

** BEWARE **** BEWARE **** BEWARE **

EMPORIUM SHOPPERS

"BOYCOTT IS ON" "BOYCOTT IS ON" "BOYCOTT IS ON"

For years at The Emporium black, brown, yellow and red people have worked at the lowest jobs, at the lowest levels. Time and time again we have seen intelligent, hard working brothers and sisters denied promotions and respect.

The Emporium is a 20th Century colonial plantation. The brothers and sisters are being treated the same way as our brothers are being treated in the slave mines of Africa.

Whenever the racist pig at The Emporium injures or harms a black sister or brother, they injure and insult all black people. THE EMPORIUM MUST PAY FOR THESE INSULTS. Therefore, we encourage all of our people to take their money out of this racist store, until black people have full employment and are promoted justly through out The Emporium.

We welcome the support of our brothers and sisters from the churches, unions, sororities, fraternities, social clubs, Afro-American Institute, Black Panther Party, W.A.C.O. and the Poor Peoples Institute.

Printed for the People — By the People of:

THE WESTERN ADDITION COMMUNITY ORGANIZATION
(W.A.C.O.)
1500 Post Street
San Francisco, California 94109

GC-7

April 11, 1968

Report on Emporium Stock and Marking Areas

This report is a summary of information gathered from two meetings; one meeting was held with the portion of Local 1100 membership that are involved in Stock and Marking areas in the Emporium and includes not only the Downtown Store but the Service Building as well. Since this report is in an abbreviated form it will be necessary to discuss much of the content orally with management and union members.

The first meeting which was held on April 3 was an outgrowth of a number of problems that had developed in Stock-Marking areas. The officials of the Union scheduled the meeting so that they could properly represent the members. A committee was selected at the April 3 meeting which is to serve as both a group of Stewards and a committee to help work out present problems and to continue to serve when non-selling classifications are discussed.

The committee met. The following points were agreed upon by the committee to be submitted to the employer. Of course it should be looked upon as a first report. It is hoped that the Personnel Department of the Emporium will join with Local 1100 officers and members to create a better atmosphere in the Stock-Marking areas:

(1) One of the basic problems is the shortage of help. Because of the shortage of help, the employees of the Emporium are required to do more than one job. Apparently when individuals leave the Emporium they are not immediately replaced and in some cases are not replaced at all. It was the general feeling of all present that the workload has increased over the years and will continue to increase unless something is done to supply more help. While the store continues to operate in these areas with fewer employees it is a well known fact that business is increasing therefore the cost of labor most likely

does not increase in relation to the amount of business that is done in a year's time.

The lack of an adequate number of workers creates additional problems that appear to be violations of the contract.

(a) It is reported that executives are doing work that would normally fall in the union's jurisdiction. This is not on an intermittent basis. It is our understanding that the executives carry out duties that should be handled by other employees on a regular basis either for a number of hours a day or at least a few hours a day. This action on the part of executives apparently serves as a "safety valve" that prevents an explosion by doing just enough work to get by. Because they do not fulfill the requirements of a full-time worker, the additional workload seeps over on to the members of Local 1100. It is the Union's intention to bring this matter to a proper conclusion so the lines of demarcation are clearly drawn.

(b) Another long standing complaint has been the requirement of stock workers to do janitorial work. While it had been continually reported by the Emporium that this was done as a security measure, I do not believe that such a claim can be substantiated by regular janitorial work. The union would have no objection if the stock people were required to take care of a small area at the close of the day for the sake of neatness. However the reports that we have received are that there are some people doing janitorial work on a regular basis. This we cannot accept and I am sure it would be difficult to convince the janitors that they were a security problem.

Therefore it is the position of the union that janitorial work should be done by janitors and stock work should be done by stock workers, the exception being work for clean up for a short time at the end of a work day. This problem

again arises because of the shortage of help in the stores.

(c) The workers in these areas are faced with the problem of a different sort, that is conflicting directives given by different executives. They want to know who their supervisor is and what authority he or she has. It should be easily understood that production is greatly affected by the interruption of normal duties by executives, etc., who request that different duties be performed than those that were assigned by a supervisor. This problem along with those previously mentioned is not raised to be a point of contention. It springs from the simple fact that the members feel that they should be allowed to do their work in a workman-like fashion. It is their feeling that the interruption caused by executives doing additional duties, etc., undercut any program of efficiency that the Emporium may have.

The foregoing points begin in our opinion from the lack of an adequate number of workers.

(2) It was also mentioned at the meeting that overtime is not equitably divided. It appears that supervisors get first choice and then those who happen to be in good standing for the moment are favored by overtime hours. Also a complaint was raised regarding adequate notice regarding overtime work. In one case a member was asked on April 6 at 4:40 p.m. to work overtime on April 7th.

(3) The point was also raised by the members that there is no telephone emergency service and that supervisors determine what calls should go through and be relayed to the members. It is our feeling that certainly in cases of emergency, individual employees should be notified and should be allowed to take calls. In the Service Building they do have a pay phone handy and it would appear that this could be done at the Downtown Store also.

(4) We discussed the layoff of markers after the busy season. It appears that there are jobs available that markers could do but they are given to people with less seniority. This conflicts with the storewide seniority provision of the contract. It should not be the responsibility of the member to request the work, this should be handled by assignment, keeping first in mind that *seniority is storewide.*

Much discussion took place during the 1967 negotiations regarding the term "where qualified". After the discussions were held, the term was changed to "for which they have qualifications". The assignment for work should be on this basis and we are sure that if this is followed, more people will be properly placed and not suffer a loss in employment.

(5) The matter of dress regulations was also discussed. It appears that the female employees in marking areas are required to wear street wear clothing. This results in the loss of much money in the purchase of nylons, etc. The people feel that either smocks should be provided and also that the wearing of slacks should be allowed. Since these areas are away from where the public would see the employees, there should be no objection to the wearing of slacks as they protect against cuts and scratches.

It was also mentioned that the marking room area is not known for its cleanliness and there is much dust and it has been some time since the floors have been scrubbed. On the question of adequate restroom facilities, it was noted that some of the areas had equipment that was out of order and in general the overall situation was less than desirable.

(6) Probably the most important matter raised was the possibility of racial discrimination. This is outlawed under the terms of the agreement and certainly again in this day and age should not be a problem. It was the general feeling of

almost all present that discrimination does exist and that this discrimination is directed against the Negro employees and the more senior employees, senior, that is, in the point of age.

It was further mentioned by the Stewards and the Committee that most of the minority people were disgusted and were looking for other jobs. They feel that they are entitled to more than a job; that they should have the same opportunity to advance as other employees do. It is their feeling and the feeling of Local 1100 as well, that one of the most important areas that should be looked into is a program that provides for upgrading of employees.

To our knowledge there is no program of training or otherwise presently in effect at the Emporium that would serve as a vehicle to assist in advancement to better positions. Cases were mentioned where people were brought in from other areas or other departments to work with the Negro employees in order that they may learn their job and then these individuals would end up with the higher position. In the opinion of the writer it would appear that a general situation at the Emporium could become an explosive one unless mutual efforts are made to correct the inequities mentioned and to provide an adequate work staff.

As an example of individuals not having an opportunity to advance let us take a look at the situation involving Russell Young. Russell Young has an excellent record and although he has indicated that he would like to advance at the Emporium, after several years of faithful performance during which time he demonstrated an ability to do his work and to help train others, he has not had the opportunity for advancement. It would appear on the surface at least that there are approximately ten available jobs in the stock area that become available through turnover alone. These would involve the working supervisor. It also appears that there would be approximately five openings per year for assistant manager. Taking all of the foregoing into consideration it certainly seems that it would be possible for some of the people to expect advancement and that the jobs should

not be given out to those who come in from the outside or from different areas.

Additional meetings have been held and more will be held on this problem, however we felt it necessary that we reduce to writing some of the points to be submitted to the Emporium. This document has been read by the committee that was selected at the April 3rd meeting.

In many cases it is difficult to put into writing the exact situation that may exist in a department or departments. It is also difficult to convey the feeling or attitude of one individual toward another. In the areas that we are presently discussing it would appear that the points listed have a great deal of validity, mainly because they were agreed upon almost 100% by those present at the various meetings.

If the Emporium Personnel Department immediately goes into a defense posture it will only serve to heighten the problem.

It is recognized by all of those that attended the meetings that we cannot change everything in a day's time. Both the Union officers and the members realize that a journey of a thousand miles begins with but a single step. It should be also apparent that any journeys from here on in cannot be walked alone. The miles must be walked together and this should include not only the store and the union, but the members as well.

In conclusion, while most of these problem areas can be discussed with the members of Local 1100, the Emporium and the Business Representatives and Officers of Local 1100, it seems that if we are to properly take care of some of the problems, namely, warehouse work and janitorial work, it will be necessary to involve other Unions.

Respectfully submitted,

/s/ Walter L. Johnson
WALTER L. JOHNSON
Secretary-Treasurer
Local 1100

WLJ:gp
ope-3-afl-cio(87)

Jim Hollins
Dept. 80-302
3544

On October 22, 1968, you issued a public statement at a press conference to which all newspapers, radio, and TV stations were invited. The contents of this statement were substantially the same as those set forth in the sheet attached. This statement was broadcast on Channel 2 on October 22, 1968 and Station KDIA.

On November 2nd you distributed copies of the attached statement to Negro customers and prospective customers, and to other persons passing by in front of The Emporium.

These statements are untrue and are intended to and will, if continued injure the reputation of The Emporium.

There are ample legal remedies to correct any discrimination you may claim to exist. Therefore, we view your activities as a deliberate and unjustified attempt to injure your employer.

This is to inform you that you may be discharged if you repeat any of the above acts or make any similar public statement.

/s/ [Illegible]
The Emporium

[Refused to sign]
/s/ H. R. Henderson
Employee

Date: 11-7-68

cc: Employee's File
Employee
Local 1100

Attachment (1)

Copy given to Mr. Hawkins.

/s/ [Illegible]

BRIEFING ON CONDITIONS

1. We are representing Black, Yellow, Brown and Red people. These are people who are not being treated like human beings.

I myself have been employed for 2 years at the Emporium, and have never been treated with true respect. I have worked on different areas to help train other persons supervise a floor, was harrassed and told I could leave if I was not satisfied. They also told me that they were going to fire me.

2. Blacks have to prove themselves more than others, cut their hair, lose their culture and try to emulate the White establishment of the Emporium.

3. There are no Black buyers, Divisionals, Upper Management, nor, are there any personnel upper management.

On April 3rd, the local 1100 had a meeting, called by the employes of the Emporium. This meeting was for the working conditions, and the discrimination of Blacks.

(a) On April 3rd, these issues were discussed but conditions did not get any better.
(b) Meetings were promised, but never came about.
(c) Sept. 3rd, a meeting was called to express the difference of Black, Yellow, Brown and Red people with management, charging discrimination again.
(d) The Union stated they were passing the Emporium up. (Con Game)
(e) The Union tried to break down the group into individual cases.
(f) The Union itself was covering up for the racist Emporium.
(g) Oct. 18th. we went to the retailers council. This was another smoke screen to break down into individual cases.

cont'd.

PETITION

We covered a floor to floor investigation of the Emporium's, selling and non selling areas. The following

imformation was given from Black, Brown, Yellow and Red people, who have been employed for a number of years there. We feel that this is a clear and direct charge of discrimination on the part of the Emporium.

* * * *

My name is Carleton Allen Washington;

A. On the afternoon of Oct. 18th, 1968, I conducted an investigation of the High Fashion Department of the Emporium on the second floor.
The investigation steemed from over mounting complaints of shortage of Blacks, Mexicans, Filipinos, Chinese, and Spanish selling personnel, buyers, assistant buyers and department sales managers.

On the conclusions of my investigation, I came up with the following information about this Exclusive High Fashion Area.

B. 1. Dept. 400—Furs $100.00 and up. All White personnel.
2. Dept. 358—Wedding Gowns and Formals. All White personnel.
3. Dept. 398—Maternity Clothing. All White personnel.
4. Dept. 490—Uniform Shop. All White personnel.
5. Dept. 321—Coligiant Coats. All White personnel.
6. Dept. 300—Womens Suits, $150 & under. All White personnel.
7. Dept. 450—Womens Bras. and Girdles. One Black assistant.
8. Dept. 375—Robes and Bras. All White personnel.
9. Dept. 311—Expensive Women's Coats $60.00 & up. All White.
10. Dept. 381—Women's Pants, Blouses, and Coats, expensive, all White personnel. (Items 8-10, are in the Downtown Branch of the Emporium.)

The only Department with any Black, Filipino selling personnel are as follows;

C. 1. Dept. 412—Women's hats, wigs. One Filipino.
2. Dept. 378—Women's pants, 1 Black, 2 Filipino and 1 Chinese.
3. Dept. 379—Women's pants, 1 Black, 0 " and 0 "
4. Dept. 440—Women's Night Gowns, Bras & Panties. 1 Black, 2 Chinese and 1 Mexician.
5. Dept. 480—Women's Robes (expensive) 1 Black personnel.
6. Dept. 371—Women's Coats amounting up to $185.00 1 Black personnel.

D. Out of the total Blacks, Filipinos, Chinese and Mexician, only 5 are Black, 3 Filipino, 3 Chinese and 1 Mexican this amounts to 12 in all.

E. We demand that all of these specific racial groups be infilitrated into the areas where the commission is the highest. The second floor.

There are no Black, Mexican, Filipino, Chinese, selling personnel in the following high commission areas . . .

1. Department 611-613; this department has no minorities selling personal. This department sells Oriental Rugs, Wall to Wall Carpetings, amounting to nothing under $200.00.
2. Department 713; this department also has no minorities (Black, Mexican, Filipino or Chinese,) selling personal. This department sells $200-$300.00 Record Players, Tape Recorders, etc.
3. These departments on the third floor 712 are selling such items as Radios, Colored Television, and Black and White T. V. sets and Steros. These items amounting up to $1,100, and there are no Black, Mexican, Filipinos or Chinese personal.
4. There are none of the before mentioned minorties selling in the following areas:

a—Washers, Dryers, Dishwashers, $100.00 up-
b—Furniture, Livingroom Sets, Bedroomsets, or Dinnettesets $200.00 and up.

c—On the whole third floor selling area, only four Black persons, 2 Filipinos, 3 Chinese and no Mexicians.

We demand selling personal of the following Racial groups to be infiltrated into the following high commission selling areas. Black, Mexicians, Chinese, Filipinos etc.

1. Radio, T.V., Stereos.
2. Tape Recorders and Record Players.
3. The whole furniture department.
4. The appliance department, selling Washers, Dryers, etc.
5. Selling Rugs in Department 613-611.

• • • •

September 4, 1968

Mr. Vincent Brown
San Francisco Retailers Council
260 Stockton Street
San Francisco, Calif. 94108

Dear Mr. Brown:

Department Store Employees Union has made every effort to resolve the grievances raised with The Emporium regarding matters concerning our members employed in the stock and marking areas.

Apparently we have been somewhat less than successful in our efforts and it appears the only recourse we have is to request a meeting of the Adjustment Board to hear the entire case. This communication will serve as our request for a meeting of the board.

We specifically charge the Emporium with violations of Section 5 B and 21 E, of the Agreement between the San Francisco Retailers Council and Local 1100. We have approximately 120 pages of testimony, recorded by a court reporter to substantiate our position.

We are ready to proceed to immediate arbitration if The Emporium is agreeable.

Would you kindly contact me in order that a mutually convenient date may be agreed to.

Thank you,

Yours truly,

WALTER L. JOHNSON
Secretary-Treasurer

WLJ:f
OPE-3-AFL-CIO(87)

Standard Form 100 (Revised)
January 1972
Approved 809-124-R0002
100-165

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT EEO-1

DE-1

JOINT REPORTING COMMITTEE
- Equal Employment Opportunity Commission
- Office of Federal Contract Compliance
- Plans for Progress Program

TOTAL

PART II—REPORTING UNIT REPORT

Part II must be completed and filed in duplicate by all employers required to submit employment data (all who have answered "Yes" to any one of questions 1, 2, 3, or 4 of Section B on Part I—Company Report). A separate Part II must be filed for each Reporting Unit of a Multi-establishment Employer, including a Part II Consolidated Report summarizing the data for the entire company. A Single-establishment Employer must file one Part II with its Part I form. A list of Reporting Units for which reports were filed last year is enclosed with the forms mailed to all Multi-establishment Employers. The list contains a 6-digit EEO-1 Control Number that has been assigned to each Reporting Unit. For Single-establishment Employers the EEO-1 Control Number is shown on the address label attached to the first Part I form.

See Instructions

Section F—REPORTING UNIT IDENTIFICATION

(To be answered in full. Insert EEO-1 Control Number assigned to this Reporting Unit in item 1c. If this is a new Reporting Unit, write "New Unit" in 1c. Leave 1c blank only if you did not file last year.)

OFFICE USE ONLY

7b, 8, 9b(1) 1. Reporting unit for which this report is filed. (If a combined report covering two or more units, please indicate and identify the area covered by the combined report.) — j

a. Name of reporting unit: EMPORIUM-CAPWELL COMPANY — k

Address (Number and street)	City or town	County	State	ZIP code	
835 Market Street	San Francisco	San Francisco	Calif.	94103	l

11f, 11m b. Employer Identification No.: 9 4 0 4 5 7 9 0 7 — c. EEO-1 Control No. — m

Section G—EMPLOYMENT DATA

1. Employment of this reporting unit.—Report all permanent, temporary, or part-time employees unless specifically excluded as set forth in section 11f of the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros. (See section 9b(2) of the instructions on how to fill out this table, and section 10 for a description of the job categories.) In columns 1, 2, and 3, include all employees in the reporting unit, not merely those in minority groups.

1, 2, 3, 14 / 9b(2) / 10 Job categories	ALL EMPLOYEES			MINORITY GROUP EMPLOYEES							
				Male				Female			
	Total (Col. 2+3) (1)	Male (2)	Female (3)	Negro (4)	Oriental [1] (5)	American Indian [1] (6)	Spanish Surnamed American [1] (7)	Negro (8)	Oriental [1] (9)	American Indian [1] (10)	Spanish Surnamed American [1] (11)
Officials and managers	1145	538	607	10	9		18	10	11		9
Professionals	66	27	39		1		3				
Technicians	20	20			1						
Sales workers	2898	332	2566	11	7		14	102	47		105
Office and clerical	827	30	797	6	3			36	59		57
Craftsmen (Skilled)	76	75	1	1			1				
Operatives (Semi-skilled)	143	64	79	1	3		5	6	5		5
Laborers (Unskilled)	372	207	171	24	7		25	16	9	1	22
Service workers	632	227	405	23	10		51	37	23		37
TOTAL →	6179	1514	4665	76	41		117	207	154	1	235
Total employment from previous report (if any)	5851	1435	4416	58	40		136	192	122		238
(The data below shall also be included in the figures for the appropriate occupational categories above)											
On-the-job trainees [2] White collar	47	19	28	1							
On-the-job trainees [2] Production											

[1] See explanation of "minority group identification" in section 9b(2) of the instructions. The term, "Spanish Surnamed American," includes all persons of Mexican, Puerto Rican, Cuban, or Spanish origin. The term, "American Indian," does not include Eskimos and Aleuts.

[2] Report only employees enrolled in formal on-the-job training programs.

NATIONAL LABOR RELATIONS BOARD

Docket No.

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SUPREME COURT OF THE UNITED STATES

No. 73-696

THE EMPORIUM CAPWELL CO., PETITIONER

v.

WESTERN ADDITION COMMUNITY ORGANIZATION

ORDER ALLOWING CERTIORARI. Filed February 19, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 73-830 and a total of one hour is allotted for oral argument.

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No. 73-830

NATIONAL LABOR RELATIONS BOARD, PETITIONER

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